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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21<sup>ST</sup> DAY OF JUNE, 2000 AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Sten, Presiding; Commissioners Francesconi, Hales and Saltzman, 4.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Acting Clerk of the Council; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Item No. 885 and 896 were pulled for discussion and on a Y-4 roll call, the balance of the Consent Agenda was adopted.

**\*868**      **TIME CERTAIN: 11:00 AM** – Adopt a Supplemental Budget for FY 1999-00 of \$17,436,394 and make budget adjustments in various funds (Ordinance introduced by Mayor Katz)

**Disposition:** Ordinance No. 174579. (Y-4)

**\*869**      Adjust FY 1999-00 Adopted Budget for Spring Budget Adjustments (Ordinance introduced by Mayor Katz)

**Technical amendments were accepted without any objections.**

**Disposition:** Ordinance No. 174580 as amended. (Y-4)

**CONSENT AGENDA - NO DISCUSSION**

**870**      Accept bids of Harris Uniforms Co., Skaggs Public Safety Uniforms and Equipment and Second Chance Body Armor, Inc. to furnish body armor for \$325,000 annually for two years (Purchasing Report - Bid No. 99344)

**Disposition:** Accepted Prepare Contract. (Y-4)

**871**      Accept bid of Northwest General, Inc. to furnish N. Montana Ave., and N. Humboldt St. sewer rehabilitation project for \$94,895 (Purchasing Report - Bid No. 99727 SMP)

**Disposition:** Accepted Prepare Contract. (Y-4)

**872**      Accept bid of Brant Construction, Inc. to furnish Fanno Creek streambank enhancement project for \$118,928 (Purchasing Report - Bid No. 99902)

**Disposition:** Accepted Prepare Contract. (Y-4)

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**873** Accept bid of J.E.C., Inc. to furnish Columbia Boulevard Wastewater Treatment Plant aeration control modification project for \$115,838 (Purchasing Report - Bid No. 99903 SMP)

**Disposition:** Accepted Prepare Contract. (Y-4)

**874** Accept bid of Oregon Excavation, Inc. to furnish impervious liner, spillway approach canal, Bull Run Dam #2 for \$326,025 (Purchasing Report - Bid No. 99941)

**Disposition:** Accepted Prepare Contract. (Y-4)

**875** Accept bid of Stettler Supply Company to furnish well maintenance and rehabilitation, ground water well sites 2, 4, 9 and 15, for \$233,770 (Purchasing Report - Bid No. 99956)

**Disposition:** Accepted Prepare Contract. (Y-4)

**Mayor Vera Katz**

**876** Confirm re-appointment of Paula Kinney, Bob Packard, Gary Maffei and Randy Miller to the Regional Arts Culture Council Commission (Report)

**Disposition:** Confirmed. (Y-4)

**877** Authorize City Attorney's Office to file an amicus brief and participate in court proceedings to determine constitutionality of proposed Initiative 47 (Resolution)

**Disposition:** Resolution No. 35895. (Y-4)

**\*878** Pay claim of Leonard Oman (Ordinance)

**Disposition:** Ordinance No. 174553. (Y-4)

**\*879** Authorize payment to the Metropolitan Exposition Recreation Commission (Ordinance)

**Disposition:** Ordinance No. 174554. (Y-4)

**\*880** Authorize the Purchasing Agent to sign a Purchase Order as a contract with Performance Abatement Services, Inc. for lead removal at Civic Stadium in the estimated amount of \$85,950 without advertising for bids and provide for payment (Ordinance)

**Disposition:** Ordinance No. 174555. (Y-4)

**\*881** Amend contract with Anderson Krygier, Inc. to provide design services for upgrades at the 3rd and Alder Garage and the 1st and Jefferson Garage and provide for payment (Ordinance; amend Contract No. 32958)

**Disposition:** Ordinance No. 174556. (Y-4)

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**\*882** Authorize acquisition of real property adjacent to 4760 SW Julia Street, Portland, from Rose A. Buchanan for the Bureau of Environmental Services Fanno Creek restoration project (Ordinance)

**Disposition:** Ordinance No. 174557. (Y-4)

**Commissioner Jim Francesconi**

**\*883** Authorize agreement with Providence Health System for respiratory evaluations for Fire Bureau employees, not to exceed \$25,000 (Ordinance)

**Disposition:** Ordinance No. 174558. (Y-4)

**\*884** Authorize intergovernmental agreement with the City of Tacoma, Washington for the purchase and delivery of the Fire Information System (Ordinance)

**Disposition:** Ordinance No. 174559. (Y-4)

**\*885** Accept the Vietnam Veterans Memorial renovation and ADA improvements project as complete and release the City's contribution to the project (Ordinance)

**Disposition:** Ordinance No. 174577. (Y-4)

**\*886** Lease certain space in Multnomah Center to nine tenant groups from July 1, 2000 through June 30, 2001 (Ordinance)

**Disposition:** Ordinance No. 174560. (Y-4)

**\*887** Authorize a contract with GreenWorks, PC for an amount not to exceed \$60,000 to provide design and planning services for the Willamette River Recreation and Parks Master Plan (Ordinance)

**Disposition:** Ordinance No. 174561. (Y-4)

**\*888** Grant Specially Attended Transportation permits to All-Med Transit, Assist Services, Inc., The Dove Medical Transportation and Kwality Kare Medical Transportation (Ordinance)

**Disposition:** Ordinance No. 174562. (Y-4)

**Commissioner Charlie Hales**

**\*889** Settle grievance of Gary Quinn (Ordinance)

**Disposition:** Ordinance No. 174563. (Y-4)

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**\*890** Intergovernmental agreement with Tri-Met for work related to the Streamline Program (Ordinance)

**Disposition:** Ordinance No. 174564. (Y-4)

**\*891** Contract with Kittelson and Associates, Inc. for professional services as part of the Streamline Program (Ordinance)

**Disposition:** Ordinance No. 174565. (Y-4)

**\*892** Local Agency Agreement between the City, the State of Oregon and Tri-Met for work related to signal priority project (Ordinance)

**Disposition:** Ordinance No. 174566. (Y-4)

**\*893** Amend agreement with HNTB Corporation to carry out additional design engineering services and construction engineering services (Ordinance; amend Contract No. 30978)

**Disposition:** Ordinance No. 174567. (Y-4)

**Commissioner Dan Saltzman**

**\*894** Contract with Janus Youth Programs for operation of the City graffiti abatement program to operate from July 1, 2000 through June 30, 2001 for an amount not to exceed \$244,000 (Ordinance)

**Disposition:** Ordinance No. 174568. (Y-4)

**\*895** Authorize a contract with the lowest responsible bidder for the Beebe Pump Station project, Project No. 6617, and provide for payment (Ordinance)

**Disposition:** Ordinance No. 174569. (Y-4)

**896** Intergovernmental agreement with the State of Oregon, Department of Environmental Quality, and Bureau of Environmental Services for assistance with the Eco-Logical Business Program for automotive repair shops, and accept a grant in the amount of \$27,000 (Ordinance)

**Disposition:** Passed to Second Reading June 28, 2000 at 9:30 a.m.

**\*897** Authorize execution and acceptance of the Sale Agreement, Warranty Deed and easements for the purchase of land and easements needed for a pollution reduction facility site located within Columbia South Shore (Ordinance)

**Disposition:** Ordinance No. 174570. (Y-4)

**\*898** Authorize execution of a lease agreement for 3,000 square feet of cold storage space, 400 square feet of office space and the necessary cooler modifications for the Bureau of Environmental Services (Ordinance)

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**Disposition:** Ordinance No. 174571. (Y-4)

**Commissioner Erik Sten**

**\*899** Amend agreement with School District No. 1 for the Home Repair Training Program by increasing the amount to \$467,417 and provide for payment (Ordinance; amend Agreement No. 32622)

**Disposition:** Ordinance No. 174572. (Y-4)

**\*900** Authorize intergovernmental agreement for permit to construct Larson's Intertie facility for the Water Bureau (Ordinance)

**Disposition:** Ordinance No. 174573. (Y-4)

**\*901** Amend contract with Ajilon Services, Inc. to extend the expiration date and increase the contract by \$18,100 (Ordinance; amend Contract No. 30747)

**Disposition:** Ordinance No. 174574. (Y-4)

**City Auditor Gary Blackmer**

**\*902** Amend contract with LNS Captioning to provide additional compensation in the amount of \$30,000 and extend contract duration for closed captioning services for City Council sessions (Ordinance; amend Contract No. 32954)

**Disposition:** Ordinance No. 174575. (Y-4)

**\*903** Assess system development charge contracts (Ordinance; Z0725, Z0726, T0041, K0024, K0025)

**Disposition:** Ordinance No. 174576. (Y-4)

**REGULAR AGENDA**

**Mayor Vera Katz**

**904** Amend agreement for Downtown Business District Management Services between the City, the Association for Portland Progress and Portland Downtown Services, Inc. (Second Reading Agenda 823; amend Contract No. 50996)

**Disposition:** Ordinance No. 174578. (Y-4)

**Commissioner Jim Francesconi**

**S-905** Amend Parks SDC code to modify the way qualified public improvement credits are defined and administered (Second Reading Agenda 830; amend Code Section 17.13.020, 17.13.070 and 17.13.120)

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**Motions to adopt enhanced maintenance credits are available only for City Parks and Recreation System not other public facilities within Parks:** Moved by Commissioner Francesconi seconded by Commissioner Hales. (Y-4)

**Motion to adopt narrowing the definition of the phrase required as a condition of development approval:** Moved by Commissioner Francesconi seconded by Commissioner Saltzman. (Y-2 Commissioner's Francesconi and Saltzman, N-2 Commissioner's Hales and Sten)

**Motion to adopt new and existing rules applies to existing and developmental agreements:** Moved by Commissioner Francesconi seconded by Commissioner Saltzman. (Y-2 Commissioner's Francesconi and Saltzman, N-2 Commissioner's Hales and Sten)

At 12:00 p.m., Council recessed.

At 12:09 p.m., Council reconvened.

**Motion to adopt conveyances of Real Property Interests specified in development agreements adopted before June 21, 2001, the value of the credit will be 25% of the appraised value of the Real Property Interest:** Moved by Commissioner Hales seconded by Commissioner Saltzman. (Y-3, N-1 Commissioner Francesconi)

**Disposition:** Passed to Second Reading as Amended June 28, 2000 at 9:30 a.m.

At 12:23 p.m., Council adjourned.

**GARY BLACKMER**  
Auditor of the City of Portland



By Karla Moore-Love  
Acting Clerk of the Council

For discussion of agenda items, please consult the following Closed Caption Transcript.

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**Closed Caption Transcript of Portland City Council Meeting**

This transcript was produced through the closed captioning process for the televised City Council broadcast.

Key: \*\*\*\*\* means unidentified speaker.

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\*\*\*\*\*: It should be off the consent agenda.

**Sten:** So we'll just pull that and pass -- can we leave it -- pull it off. Okay. So let's vote on the consent agenda with 885 and 896 removed.

**Francesconi:** Aye.

**Hales:** Aye.

**Saltzman:** Aye.

**Sten:** Aye. And if you could read 885, please.

**Item 885**

**Francesconi:** Let me introduce it this way. This is doug barmareto, who is here today representing the vets. This memorial was constructed in 1987, thanks to the dedicated to folks who recognized we weren't paying adequate tribute to Oregonians who gave their lives and made other sacrifices in a war that conflicted this country. So they took it upon themselves to dedicate a memorial to 57,000 Oregon men and women who served in the vietnam war and to the 800 killed or missing in action. 1987 was three years before the american disabilities act came into play, and there was also some shortage of money. So it took some additional work on behalf of the vietnam veterans of Oregon memorial fund. They raised contributions -- and nearly \$300,000 to complete renovation of the site, which is actually one of the most visited by tourists in the whole city of Portland. They replaced gravel pathways, new signs, and -- in the parking area. And they did a lot of things. So there's some people to thank, which i'll save for later. We're here to mark a significant event in the life of the memorial, and that's why I thought it would be good to do it publicly. Go ahead, sir.

**Doug Barmareto:** Thank you. Commissioners, we're honored to present the improvements to the city of Portland. This has been a partnership that has continued commencing in 1983, and there are a number of people as any team effort, this magnitude that should be recognized. Fellow vietnam veterans here today are mike and tim, mark jones is our fund-raising consultant, mr. Clayton herring can't be here today, but as he was from the period of '84 to 1987 was significant and without him we couldn't have done the fund-raising. Obviously our architect, doug macy, once again created a design with these improvements that not only accomplished the engineering -- tasks, but in no way did anything but improve and enhance the beauty of the memorial. As you saw when you were up there on memorial day, commissioner the. Meyer memorial trust made a very significant contribution. Fred nielson, who continues to -- for all theories years to be someone who gets the job done up there. Last but not least, not only the city, but a man -- another man who owns otkm construction, pat o'brien, who is not in town today, acted as the general contractor, and devoted hundreds of hours of his time and expertise and even their money to this project. So, again, it was a team effort that will once again create a park, not only a memorial for our veterans, but a city park that will take us many years in this millennium. We'd like to thank the city of Portland also for the contribution that the parks department made and for the cooperation and the work that everyone did who works for and with the city.

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**Francesconi:** Thank you. I don't have any questions. I don't know if anybody else does.

**Sten:** Any questions from the council? Thank you.

**Barmareto:** Thank you very much.

**Sten:** Would anybody else like to testify on this item? Come on up. Oh, you're just standing up. It looks like there's no further testimony. Roll call.

**Francesconi:** You did a great job, doug, of thanking everybody. I guess there is one additional person. The parks and the city ended up contributing \$58,000, so the council is to be thanked for that. Although most of it was raised by the private sector. Fred nielson was mentioned. He actually helped inspire these changes that were made, because one day he saw a vietnam veteran trying to maneuver through the gravel, trying to make it to the site, and fred is actually a parks employee, and he decided this was not right. And so he helped inspire this to happen. So I wanted to publicly acknowledge fred. This is a tremendous memorial in our city for the -- and it's deserving for not only the 800, but all 57,000 Oregon men and women who served in vietnam. Aye.

**Hales:** Aye.

**Saltzman:** Thank you for first of all bringing this beautiful memorial to our city, and thank you for bringing it into conformance with the americans with disabilities act. For the reasons commissioner Francesconi stated, it's very appropriate that this be done. Thank you. Aye.

**Sten:** Thank you as well. This is terrific work. It's an important memorial, and obviously this makes it a lot better. There's people with disabilities who served in the war, and being able to get everybody up there is critical. Appreciate it. Aye.

**Item 896**

I think we're up to 896, and we'll move that to second reading. So 896 moves to second reading, and that puts us on the regular agenda.

**Item 904**

Could you please read item 904. This is a second reading. Roll call.

**Francesconi:** Aye. **Hales:** Aye. **Saltzman:** Aye. **Sten:** Aye.

**Item S-905**

**Francesconi:** We're going to have parks come up. What i'd suggest, mr. President, if we had parks go first, and then either homer williams go second, and the league of women voters third. Then we can open it up to public testimony. Council, as I said at the conclusion of the last hearing, I want to start out with again saying how terrific these parks sdc's are. They've allowed us to purchase park land in very park-deficient areas. And we have new parks as a result of this. We also have a tremendous -- we'll have tremendous parks in the river district, and the river district agreement, in my personal opinion, has turned out to work for the benefit of the public and the city. So where we are is trying to improve our system development charge for the benefit of the public. And there's some things that we talked about at the last hearing that I think there's agreement on. Two, if not three areas. I'm summarizing, and bringing people up to speed at the same time. The first is that when we're having investment agreements in the future, any future development agreements, if the parks sdc is not mentioned in the agreement, there's going to be an assumption the sdc will apply. So there's no confusion as to the status. So we don't find ourselves back in this situation again. The second agreement I think is that the parks, if there is such a development agreement, the value of the credit will be determined at the time of the development agreement. That's the second thing these amendments do. So we don't get into a situation where public improvements that we make increase the value of the credit to any developer. The third thing, and commissioner Hales raised some issues on this, we're going to not allow any transfer of credits by the sale of these sdc's. I think generally there's agreement. I think parks will do some work on it,

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but even after discussing it last week, parks is still of the opinion that we'd be better not to allow that as a way of keeping a lid on opening the door on this. So those are the three issues I think we have agreement on. Now -- and we've got to remember we're moving forward, and this is good. This is all positive. In terms of looking retroactively, where we don't have agreement is -- and we're going to hear testimony today -- is on two additional areas. One is, should there -- a credit be given on a second piece of property, that mr. Williams has, that is in the river district. And so you are going to hear some pros and cons on that issue. The amendments that we're -- were presented to you last week would, in my opinion, now in pete castings's opinion, would have allowed a credit on that second piece of property, and I had told you that I didn't want to go that direction. So I have prepared some amendments that would eliminate a credit on the second piece of property. And i'm going to offer those later on. We should distribute them now, for those that don't have it. The second issue which I talked about last time was granting an enhanced maintenance credit, which I still want to do for the reasons I said last time. Because maintenance in the central city is eating up our ability to deal with neighborhood parks. At some point i'm going to be confronted as parks commissioner with stopping buying land because we can't maintain what we've got. And that's not fair to the neighborhoods. In this last budget, we had \$500,000 of new maintenance that was all in the central city for the east parks, as I tried to fight, with your help, 700,000 in cuts to the neighborhood maintenance. So that's the -- these last two are the issues that are still to be resolved today. What i'd like to do is take testimony on these or other issues i've raised, close the testimony today, and vote on it next week. So that's how I propose that we proceed. Those are the issues in front of the council. John Sewell, from parks. Or pete. Whichever.

**John Sewell:** We'll let council go first.

**Pete Castings, City Attorneys Office:** I think the proposed amendments have already been distributed. The first would narrow the geoff anything's of phrase "required as a condition of development approval." Basically for something to be viewed as required as a condition of development approval, would it have to be specifically listed as a condition of approval in the decision. The second amendment would provide that the new and tighter rules governing conveyances would apply to existing development agreements as well as new ones. The third amendment, which is I think just clarification, would make it very clear that enhanced maintenance credits are available only for parks facilities, and not for other public facilities that might be located within the boundaries of a park. Some people in reviewing the old language thought that any public facility within a park might potentially be eligible for enhanced maintenance credits, and that wasn't the intent. It's only parks facilities, not other public facilities within the boundaries of parks, like roads, for example. That's all I have to say, unless you've got questions.

**Hales:** Maybe a question for ofa and john more than it is for you. Have we wrestled to ground -- i'm not arguing with the enhanced maintenance credit. I think it's a good idea. Have we wrestled to the ground the question of whether ofa will add new parks maintenance to target when a new park is accepted by the city? Having said testy things to our finance director about that more times than either of us would care to recount, I thought we'd settled that. If you have to disappoint me, I won't shoot you as the messenger.

**John Sewell, Portland Parks and Recreation:** I think to the most part we have. I think you've struggled with that through the last budget season with respect to some of the new responsibilities we've gotten. I think what the proposal here to do is to see about adding enhanced maintenance, if we could take it beyond that level.

**Hales:** This doesn't help or make it better, but the question is basic maintenance is covered.

**Sewell:** Yes.

**Francesconi:** That's my understanding as well. And you've been very helpful on this.

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**Hales:** I've been very obnoxious. I hope by being enough of an irritant of a would finally say uncle and allow that common-sense policy to take root.

**Sewell:** Very briefly, if I could take a second, or a minute, I think the intent here is to say that in many of these areas we're looking to do more than the base level of maintenance. I think we've seen that at pioneer square, to be able to do more litter pickup, to do better pruning, to do more stain removal, those things that can make such a difference, but that are beyond the capability of sort after base maintenance level, and I think that's what these amendments work to achieve on both in this case and properties we'd get, like north park square and jamison.

**Sten:** Commissioner Francesconi -- I want to make sure I get this exactly straight. I think the future development agreements and other things are fairly well laid out, and that's the main point of this. But could somebody lay out for me what exactly happens or doesn't happen with the parcel that's -- there's one parcel in the river district, if i'm understanding this right, that is going to get a credit or not. And how do these amendments -- what do these amendments do to that parcel?

**Castings:** I think that if the council were to adopt all of the amendment that's have been put forward, once those amendments take effect, the second parcel would not qualify. For parks sdc credit.

**Sten:** So no credit.

**Castings:** Correct.

**Sten:** How about with the enhanced maintenance? Is that still a possibility?

**Castings:** That's still a possibility.

**Francesconi:** It might be helpful, I know the developer -- other developers too are not clear as to the process. Could you elaborate about what you have in mind?

**Sewell:** What would happen, and we've had some discussion on this, is that in looking at a new park space such as jamison square, parks bureau can lay out what it can do for basic maintenance on that site, knowing development of it. The developer can lay out those things that he believes would enhance the maintenance, and he would indicate the additional dollar value of that. He would bring that to parks, and it would be reviewed and adjusted, and a final determination made as to what really is and is not acceptable with respect to additional and enhanced maintenance. That could then be codified and agreed upon, and at the time then the developer goes for a building permit, instead of being -- saying, here it is and you have this many units and you'll be charged this much, he could present paper from the director saying, no, we have a credit to do this through time for this value. And that would be in lieu of paying the sdc fee. That's my best understanding.

Pete, do you have anything to add to that?

**Castings:** No. The ordinance -- the amendments that the council added last week lay out some of the framework for how that agreement looks and what needs to be covered in the agreement. It needs to go into deal about the enhanced maintenance, it needs to provide financial surety to guarantee the performance will occur. It needs to identify what the net present value that -- of that enhanced maintenance is for purposes of awarding credits.

**Francesconi:** Can you explain how net present value would be arrived at?

**Castings:** As I understand it, net present value, you look at the total amount of a revenue stream over a period of time, and then using a discount rate, you calculate the amount of money you would need to have in hand now to generate that revenue stream over the defined period.

**Francesconi:** And maybe my last question, is there -- could you explain a little bit about how enhanced maintenance and even enhanced programming adds to the value of a park, and adds to the vitality of the surrounding areas?

**Zari Santner Portland Parks and Recreation:** Commissioners, parks, as you know, we have different kinds of parks. We have neighborhood parks, community parks, urban parks. Many of

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our community parks and neighborhood parks, they have features which draw a lot of people -- kids, adults, seniors, ball fields, playgrounds, wading pools. In our urban parks, there are certain features that are used, like bunch, fountains, that people come and sit and enjoy. But a lot of times we really need to facilitate activities that will draw people to use urban parks. And the nature of those programs are varied, based on the design of the park. In a park like south park block, which is green and has benches, art festivals, and certain areas concerts, those are the things we can do that could draw people in. In a park that is being designed for the river district, we have the first park, actually, has a fountain that is designed in such a way that when it's turned off, it could become a stage for performances. It has a gallery for sculptures, for resolving sculptures. These are -- the reason it was designed that way, is so it would give the city and the park opportunities for programming. One of the things we want to encourage in urban parks is more use so that there are less hours of the day when it's isolated, when it has less activities, and that's when usually most of the vandalism occurs. And as you know, vandalism increases our maintenance cost. So programming and maintenance really go hand in hand. The more activities, positive activities you have in the park, the less approximate we would have with maintenance. So we in fact -- parks bureau, the last year had a cultural programmer for our parks system was in 1984. That's when o'brien square, that's when south park blocks and many of our other parks downtown, any -- and in neighborhoods used to be planned for festivals, cultural activities, markets and things like that. But as the bureau's budget got reduced, that part was eliminated. And as a result, many of our you're bran parks are -- urban parks are suffering from lack of programming, and we could really use the funds needed to encourage that, and as a result reduce our maintenance costs as well.

**Hales:** An implementation question. Whose option is the enhanced maintenance? Is it the bureau's option or the applicant's option?

**Castings:** It would have to be -- it would be the parks director's option.

**Hales:** You mean the parks director can require an applicant to do this?

**Castings:** No the Parks director can decline to enter into an agreement for enhanced maintenance that would qualify for credits.

**Hales:** So it's the applicant's option to propose this.

**Castings:** Right.

**Hales:** Okay.

**Castings:** The parks can always say no.

**Sten:** How much money is the credit on this piece of property?

**Santner:** We do not know yet.

**Francesconi:** On the maintenance, or --

**Sten:** No, no. We're going to be talking about whether the credit is on the property.

**Santner:** We do not have the value of the next property. Yet. We have not been given that value.

**Francesconi:** A range i've heard, maybe it's not accurate, is 700,000. I don't know where I got that number. You don't know where I got it. Okay.

**Santner:** We don't have a --

**Francesconi:** Okay.

**Saltzman:** I'm just trying to get a larger philosophical context for me to consider in, and maybe the people at the table are the right ones to answer the question. Maybe it's some of the people that are going to testify. I'm trying to understand, if we have a previous credit that was granted through a development agreement, it seems like any time a city government takes any kind of action, they always honor existing agreements. And I guess i'm trying to figure out what's the rationale we're suddenly using these changes to sort of -- it looks to me, nullify an existing agreement. And how --

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typical actions we take, we usually say this goes into effect tomorrow, anything that was signed yesterday is okay.

**Castings:** I think I can answer that, i'll though i'll have to speak carefully, because I think you'll hear there's disagreement about exactly what the development agreement says. The city's view of the development agreement is that it does not address either liability or sdc charges or eligibility for sdc credits. There is language in the development agreement that talks about how certain parcels are going to be conveyed to the city without charge, but it doesn't talk about sdc's.

**Francesconi:** So commissioner Saltzman -- correct me, pete, if i'm wrong -- it wasn't the development agreement that allowed the credit, it was the sdc imposed afterwards. We're the ones that set that. And so what i'm recommend assisting we make some adjustments in it. I don't know if that answers your question, but that's what we're doing.

**Saltzman:** Okay.

**Hales:** That gets to a legal question I guess we've -- we probably need to come back to. At least I do. That is, I like to -- development agreements a lot. I think they're really cool. You can do great things with them. I'm not sure how relevant they are to the equity issues of sdc credits. In fact, pete it might be interesting for you to opine a little bit about how much a development agreement can trump state law anyway. But going back to the drafting of the sdc law, which both pete and I had the privilege of participating in, why do we give credits to people? Because they're providing infrastructure we'd otherwise have to build at public expense, right? Whether it's water lines, sewer lines, streets or parks. The difference about parks, and I don't remember all the arcane stuff about the ordinance and the findings and the justifications, but the difference about parks are, there's not a treatment plant five miles away that you're paying for. The park is in the neighborhood. So it kind of gets around to a fundamental question here of common sense and maybe legal equity, and that is if we don't provide a credit, what are we going to do with the money? The money is to build parks in that neighborhood. If somebody is giving us land for parks in that neighborhood, haven't they accomplished the purpose for which the money would be collected in the first place? So I think we may have gotten a little too tangled up in all this stuff about development agreement and timing, whereas again, what's a parks sdc for? As building permits are paid for in a given neighborhood, we can buy a piece of land and build a park. If somebody gives us the piece of land, all we have left is the cost of adding the park improvements. If somebody gives us the land and approves the park, we really have nothing to do -- left to do with the money. It's not a tax, it's a fee for infrastructure in that neighborhood. And that's I -- I think we sometimes get confused about sdc's, and particularly in this discussion, and start thinking they're a tax resource. They're not. They're a fee for infrastructure construction. And I don't remember if it was districted in the marks sdc or not.

**Francesconi:** It is.

**Hales:** Which it probably should be. It doesn't have to be districted with the sewer plant, because that serves everybody in the city. But with parks, it -- i'm glad you reminded me we did that, because that makes sense. I guess part of what I want to hear from parks in terms of rationale, as we get into a debate about whether a credit should be provided, is, why is it we need their money when we've got the land? In this neighborhood.

**Kasting:** I think that is primarily a policy question that Portland city council has taken a generous approach towards credits. Probably for the reasons commissioner Hales is referring to. The development agreement is a bit of a side issue, and is a bit of a historical artifact. There is an appeal in progress right now, as you know, having to do with the decision to award credits on the first parcel. And it's a function of a specific development agreement and language in that specific development agreement and what it means. So I think that is a bit of a side issue. The broader

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policy issue is what are the pros and cons of being generous with credits as opposed to not being generous.

**Hales:** But I think the debate about this has been characterized as whether we're going to be generous or not. What do we want the money for is the question. If we get the park and the money, isn't that double taxation?

**Sten:** Can I try? Maybe i'm asking the same thing. It may be a side issue, but it's the issue of today's hearing, because the policy is I think more or less agreed to, if i'm not wrong. It's this one credit. It seems to me both sides have -- this is one of those rare ones where both sides on the face have a reasonably compelling argument. The first one, as I understand it, and we're going to hear them, so please correct me if i'm wrong, the one is that the sdc charge came after the development agreement, and it affects everybody in the city, and so you never would have negotiated the development agreement expected sdc charge because it didn't exist, and it was put in addition to whatever your requirements were on everyone in the city, so therefore you should pay it even though have you this development agreement, because it came after. So it's a new requirement that's on top of whatever other requirement you have with the city. It makes sense. The other one is that the development agreement so clearly fits the substance and spirit of what the sdc is trying to accomplish, that it's punitive to say if you entered into an agreement that meets what the sdc is intended to do, that you should then have to pay it on top of it as whole, because you're essentially being double charged. Then the sort of other threat that runs through both of these arguments is how much did you get or not get back from tax increment spending in return for that donation. So it gets confusing because you've also got an economic issue. The question to parks is, do you or don't you have in the river district with the donation of this parcel what you want?

**Santner:** In terms of --

**Sten:** In terms of why you wrote the sdc. Do you have that with the donation of this property?

**Santner:** There are four parks planned for at river district. About 60,000 square feet of that I think a total is two urban squares, each one-acre, 80,000 square feet. And one-neighborhood parks, two acres, and a future waterfront park, which could be four to six acres. Of all of that, only one full urban square and 20,000 square feet of second square has been donated. The ball we still need to purchase. And then develop. So the answer to your question is sort of yes and no. We have parts of the parks that we need, they have been donated, but the others we still have to purchase.

**Sten:** That makes a ton of sense. I don't know if there's going to be a common sense answer to this, but i'm trying to see if there is one. I guess my follow-up question would be, you've got one developer who's donating, if that developer gets a credit, are there still other properties that are going to pay -- it seems there's a lot of sdc's that are going to get paid in this district, and i'm trying to get a sense of -- clearly -- what percentage of those sdc's is tied up in this credit. I'm not sure i'm asking that right. There's a lot of development that's going to happen in the river district, a lot of it is going to be hoyt street, but a lot of it isn't.

**Santner:** Correct.

**Sten:** Have you done the economics to try and forecast that once the river district is built out and we charge the sdc, do you think we're going to be where we need to be in terms of getting the park land purchased by the economic engine of the development, and if you've looked at that, what role does this particular credit, which is the last one left before we get this clarified, play in that economics?

**Santner:** Commissioner Sten, we have not. The reason is that we really don't know. The development is sort of solving. There are sort of master plans that identified which parcels would be housing, which would be office or hotels, but as is the nature of the development, decisions are changed and based on the market. So we have not done that because we do not have a full picture

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of what kind of development and how many units of housing would ultimately be developed in that area to do that.

**Sten:** Do you have a ballpark of any kind?

**Santner:** I'm afraid not.

**Sten:** It makes it hard for me to guess -- i'm trying to get at whether or not this credit meets the spirit, and substance of what you're trying to do as opposed to legally can we charge it or not. It strikes me legally we can charge it and legally we cannot charge it.

**Francesconi:** The problem --

**Sten:** Based 0 a vote of the council, subject to the appeal that's going on.

**Francesconi:** The problem, again, I supported the director's decision that developer get the first credit. The problem, though, with the extension of your argument, since we're thinking out loud, commissioner Sten, which I appreciate. That those other developers of housing would have not gotten anything in exchange through a development agreement. And yet they're required to contribute to parks.

**Hales:** You lost me there. I don't understand. In exchange for what? They're not doing any land, are they?

**Francesconi:** That's the point. I think where commissioner Sten was going, other people will contribute to the sdc to fill out the needs. But then they didn't get any benefit.

**Sten:** Would I argue somewhat differently. This is -- I think they actually are getting the full benefit of the city's infrastructure investment without putting up anything as opposed to hoyt street, who's putting up a lot of things, and they're riding on hoyt street's back, I would argue, in terms -- because the hoyt street contributions, for good or bad, leverage the city's decision to put the infrastructure in. These other folks aren't really paying into that, but they're getting it. They got the lovejoy ramp down, et cetera, et cetera.

**Francesconi:** I can see that.

**Sten:** Why don't we move on, then. Don't go anywhere, staff. I think you're just getting started. Hoyt street first?

**Francesconi:** Yeah, go ahead.

**Sten:** Should we set a time limit?

**Francesconi:** Well, I -- it might be giving ten minutes each side.

**Sten:** How about we give each side ten minutes, then followed by questions.

**Steven Janik, lawyer for Hoyt Street:** Members of the council, i'm steven janik, the, and with me is homer williams, a principal of hoyt street. We're sorry to have to disagree with you on this point, commissioner Francesconi, but we don't think these amendments are fair. I'd like to sort of step back for a moment and just summarize how we got to this point. There was a development agreement that was approved by the pdc and by this council before the sdc's were ever put into place. Nobody thought about them. Under that development agreement, hoyt street properties agreed to donate \$188 --188,000 square feet of park space or pedestrian open spaces. A total of 4 1/2 acres in this area. There is the proposition that commissioner Francesconi asserted that I do not believe is correct. That proposition was somehow a credit should be denied for these donations because in that development agreement, hoyt street already got a bunch of stuff from the city in return for the promise to give the parks. Now, that i've read in the newspaper. But in reality, that's not the fact. The fact is that hoyt street made a number of commitments to the city in terms of building low-income housing, building at certain specified densities to meet city policies and goals, and in return for hoyt street making those commitments, not the commitment to give park land, the city agreed -- excuse me, the city basically agreed to the terms of the redevelopment -- the development agreement. And commissioner Sten, you indicate that you don't perhaps think that's

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correct, but i'd like to quote for you from bruce allen, who was the lead negotiator on this. This is an affidavit that mr. Allen is submitting in connection with the now pending appeal. He says, the language in the development agreement regarding property conveyances that -- namely the donation of the parks, was not one of the deal points negotiated. The dead indication of park land was not a consideration for other commitments made by the city. In exchange for city commitments for infrastructure, the city received land use restrictions on hsp's property that required to build affordable housing and contribute to the lovejoy project. We don't agree with the characterization that the credit should be denied because hoyt street has already gotten something in return for the city. -- from the city. The current ordinance, specifically says in the case where property is being given pursuant to the terms of a development agreement, the credit will be allowed. The effect of the amendments proposed is to delete that so that it remains somewhat unclear as to whether or not property being given as part of a development agreement is or is not qualified for an sdc credit. Our position is that it shouldn't make any difference whether the party is giving it as part of a development agreement or whether the party is giving it because a land use approval imposed it as a condition. The fundamental point is, the property is being given for the park fulfilling the purpose for which a -- we request the credit should be granted for this second dedication of the park. Mr. Williams has some comments.

**Sten:** Can you pause their time for a second? Are you really trying to say with a straight face that it's in the development agreement, but you and your client just threw that part of the agreement out and felt like you got no -- you gave this for free, but you donated -- it doesn't make any sense that you would have negotiated this -- I voted against that agreement. I'm a huge supporter of the river district work, but I thought the agreement was terribly vague, which is why I voted against it. And I think i'm on the record saying these are -- appraisal issues will bite us in the behind. You just lost a lot of ground with me. How in the world can you say that the parks donation isn't part of the overall calculus of the development agreement?

**Janik:** I wasn't there, and i'm not saying that. I'm quoting bruce allen, who is the city's negotiator.

**Sten:** He should be ashamed of himself to say that. That's a crazy statement. The people who voted on it are up here. To say they didn't take into account a major factor of what's written into the agreement -- that defies credibility.

**Francesconi:** The other problem of the argument, steve, with all due respect, is that's why you got the first credit. Because the development agreement. So then now to argue that it shouldn't have been in the first agreement because it wasn't consideration doesn't make --

**Hales:** Wait. I thought they got the first credit because of the donation.

**Francesconi:** No. The sdc exempted it.

**Janik:** I would disagree. We got the first credit because we came in and the ranks said you would get a credit if you gave land that was a qualified public improvement. That land was a qualified public improvement because it was the type of park the city describes as a qualified public improvement. And the ordinance as it existed created no impediment to getting that credit because of the fact that we had agreed to give that under the development agreement. That's why we got the credit.

**Francesconi:** That's what i'm saying.

**Sten:** This whole thing -- we'll go back, but in the development agreement, it doesn't require you to build affordable housing, but only if the city pays for it. These are major distinctions. You're not required to build a single unit of affordable housing without the city's money. I think you're misrepresenting this development agreement. I'm sympathetic to a deal is a deal, but accept that the parks thing was charitable and everything else was a straight across negotiation. It's -- that's nuts. Let's go back to the testimony.

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**Homer Williams Hoyt Street Properties:** Okay. At the end of the day -- I think probably I look at this agreement different in the sense that we had -- we really didn't have a very broad agreement on a lot of issues. And I think that we are in a position of revisiting something that to me, when you're in a partnership, and we really do have a partnership down there, it's a private-public partnership, that, you know, sometimes things do change. But when they do, the partners sit down and talk about what those changes are, what the intent was, and where do we go. It's not an arbitrary type of decision. And if we get away from the agreements, we all had a goal. And I think that -- and it's to build a great neighborhood. We're not here with our hand out. I mean, we've exceeded all the density that we've been asked to build in that project to date. We're aggressively working on the affordable housing projects. We are building affordable housing without asking for subsidies. And -- in our newest project. We agreed the 700,000 for the trolley, we're happy to give \$100,000 to the chinese garden. We contributed \$200,000 to the pearl arts. Plus another million dollar commitment, which is all going into the neighborhood. So I think we're not only meeting, we're exceeding what we agreed to do. And i'm just saying, we had an agreement. If things change, then let's talk about it. But I don't think we just abrogate the agreement. We gave those parks because we thought they're an integral part of the neighborhood. We -- it's not 66,000 feet. There's another 70,000 feet, because the plan that we were going to submit, we went to the neighborhood and it had less open space. They weren't comfortable with it. We agreed with them. We didn't come back and say, we're going to give 70,000 feet here, so we'd like to get some of this stuff back. We still honored our agreement with the parks there. There was no parks south of lovejoy. Once we started looking at the plan, we thought, this doesn't make sense. We need -- why not have something south of lovejoy? We're still having the parks north of lovejoy, and we've increased the open space throughout the project. We're looking at a new plan right now that connects from park to building to building to park, which could be another 40 or 60,000 feet of open space, because we think it's better for the neighborhood. We also hopefully think it will be better for the development and financially in the long run, probably better for us. Hopefully if we do it right. That's how it should work. And everybody should win across the board. So, you know, I don't like sitting here -- we don't have our hand out. We're just asking to be treated as partners. And -- in this deal, not especially over what somebody else would be treated. We're happy the other people in the neighborhood are building successful projects because of things we're doing. It makes the whole neighborhood better.

**Francesconi:** Homer, there's an argument, a very good one, only one part of it, that 1.2 on top -- 1.2 million on top of an agreement reached in the river district agreement is treating you special. For that first park donation. When it got to 1.2 million, partly because of infrastructure because of we contributed. I don't subscribe to that point of view. I'm glad you got a credit for the first property. I appreciate it. It takes two of us to make a partnership, and I hope we can survive this hearing being partners. So I also appreciate your efforts to provide enhanced maintenance and programming so that we can get past this stigma with the business community that parks don't contribute to the vitality. So it was my idea to come up with an enhanced maintenance that would benefit you, but benefit parks. Now in my opinion, and the council can disagree, you are asking for too much. I think that this proposal is fair to you and fair to the public.

**Williams:** Well, I think that, again, because we haven't fleshed what the enhancement program would be, and I think the language that said that, you know, either/or, I thought deals with that. I don't -- we're the ones donating the parks. Not anybody else in the neighborhood. We're happy to do it. We're also paying sdc's for all the other parks in the city. So we're not just trying to get all credit for -- out of the sdc program. What we're saying is, what we're doing here we think is substantial and important. And we should get credit for that. We are still paying for parks

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throughout the city. At the end of the day, are we all going to be able to work together? Certainly. Can we agree that we sometimes are going to disagree? Yeah, I think that's important. I think that your efforts trying to find a solution, you know, I commend you for that. We haven't got one yet, but we may get one. I don't know. But because we're operating in blind territory right now, I find it hard myself not to feel that we've done what we've been asked to do, and if there's something else that's going to be asked of us, we ought to be at the table. And it shouldn't just be by fiat.

**Saltzman:** What was the reference to either/or you mentioned?

**Williams:** Either we get a credit or we go into an enhanced maintenance program, if we can make that work. In other words, I think the idea of enhanced maintenance --

**Hales:** Right now our proposed actions would leave you only one option, is that is to go to the enhanced maintenance.

**Williams:** Which has not been flushed out how that would work. And -- but I happen to think that that program, because as we know, you know, the maintenance issue -- right now the city does have quite a bit of money compared to some years. We all know when times get bad they can be really bad, or sizemore does something really stupid, and all of a sudden there's no money. But -- and I think neighborhoods should take responsibility for their parks, and I think that if they want something that is going to be an enhancement of some type, they ought to be willing to step up. We set up a master association that we have everybody paying into just for that reason. And so if you're going to live in the pearl, is and certainly in one of our buildings, you've got to be prepared to spend additional money, which we anticipate will go to things like parks, could be additional police help, could be clean-up on the streets, whatever it is. There's a boardwalk, there's going to be a lot of people from around the city visiting. The neighborhood is going to have a more intensive lifestyle. And so -- in order for it to stay ahead of the curve, it needs to have some of these tools. So we have no problem with that. In fact, we've I think we've been ahead of the curve on that. I've talked to parks about enhanced maintenance since the day we started parking on the parks.

**Francesconi:** He has been. In fact, I think it was homer's idea originally.

**Sten:** A couple technical questions. Homer, do you have a sense of what percentages of the district is wrapped up in the development agreement and what isn't? I think in -- just trying to be fair, i'm not sure what fair is, but one of my instincts on fair is that hoyt street is paying -- is donating property and now perhaps paying sdc on top of it, and doing other things, some other property owners are paying the sdc but not doing anything else. And so i'm trying to get at, what percentage of the district is in the development agreement and what isn't?

**Williams:** Well, I think we're the only parties -- nobody else in the district is a party to that agreement. And it is true that they do benefit, everybody will, from the -- to what john car row is doing, to what al is doing. And that's fine. I mean --

**Sten:** How much of the district are they compared to you?

**Williams:** Oh, well, there's about 100 blocks I think in the district, and we're probably a quarter of those.

**Sten:** I guess the main argument I see for some sort of credit, and that was a whole other issue on amount and -- I don't know what the amount is -- is that you're donating land that the other landowners are not doing. And they're benefiting equally from the city's infrastructure investment as you are. It seems to me you put up with some things to help spur the city's infrastructure investment, whatever counts, what doesn't count, whatever motivation led you to do that, it seems to me to be true that 75% of the district didn't give the city anything for that infrastructure. And so clearly they ought to be paying the sdc, in my mind, but whether or not you should get a credit -- I

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guess the follow-up question is, have you valued what credit you think would be fair on a dollar amount based on this second parcel?

**Williams:** I don't -- we have to have an appraisal done there. Have been numbers bandied around. Don't hold me to this, because i'm not sure, but I think in the 6, \$700,000 range. I think that, you know, there's parks and then there's open public space. What's interesting is something like this is work in progress. We're going to need to be talking to each other every year, every six months. Things, you know, I mentioned a new plan that would have I think a very significant impact down here. And so we've been working with city planners and doing some things. This stuff just evolves. And I think the important thing is, if we have an agreement, then if there needs to be changes to the agreement -- if I was here saying, I want to do buildings instead of parks, because we're not doing as well as we thought we were, I mean, i'd have my head handed to me. I'm just saying, I think we should be at the table in how it relates to our agreement. And we're not here asking for something outside of that agreement. There's something new that happened. And so, you know, we should be -- because it's something that is involved with a long-term agreement, then we should, you know, there's a reason to look at it. That's all i'm saying. And deal with it.

**Sten:** Thanks. Any other questions?

**Hales:** I'm not even sure how to frame this question to the both of you, but it's really a follow-up on erik's. It's not so much land area as housing units. Is that true? Is it about a quarter of the housing units in the district, or maybe a third are on your property?

**Williams:** Well, there's --

**Hales:** Yield over time?

**Williams:** I think there's a total of about -- if you're talking about housing units, then you would -- we've got I think about 2800 housing units, something like that, or 3200. I think we're anticipating 5500 housing units.

**Hales:** In the whole district?

**Williams:** In the overall district. Everybody is exceeding those. So it will probably push 6,000. What's not included, there's an enormous amount of office development.

**Hales:** I think we're talking past each other in this discussion a lot. We're talking about policy, and you -- you just were in sort of general terms about what constitutes a fair deal between these two partners, public partner and the private partner. We're talking law in terms of what the development agreement said or didn't say. But actually in my opinion, this isn't either law or policy, it's something much worse. And it's accounting, and that you're selling housing units, or renting them, to people who didn't pay an sdc in their building permit, but it was built into the basis of the cost of the unit they bought, because you donated some land. John carroll, two blocks away, is selling housing units where there was no donation of land, and the basis of the units -- in the basis of the units cost, but each is paying an sdc. That's why we have to drill down more on erik's questions. So there are going to be 6,000 housing units in the district, some have been given a credit already, more of them might be given a credit if the second credit is given. Will there be enough sdcs left in the remaining units that will pay an sdc on a cash basis to cover that cost that was anticipated to come from sdcs? Not all the cost of the development of parks was supposed to come from sdcs. Some was coming from tax increment. That's what I haven't heard yet, sort of the account can side of this. Everybody's got a load on the cost of their unit. It ought to be roughly equal. The people who are participating in the land go nation through their units' cost, ought to be paying about what the people who are writing a check are paying on their units' cost, right, pete? Back to sdcs one 01, or at least my class we participated down -- in down in salem. That's what sdcs are all about. Getting everybody in the neighborhood to share roughly equally in the cost of

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the infrastructure that they end up using. And of course we don't have a commercial sdc, so it's inequitable to start with, only the housing in the district --

**Francesconi:** We're working on it.

**Hales:** That's not your fault, it's just not there yet. Only the housing purchasers are paying for the parks at this point and the people at the office buildings get to go enjoy them at the expense of the residents. So are we -- this is not a question for you so much as for the staff -- are we with or without the donation, where are we in the accounting of this? I don't have a sense of that yet, and I don't know if you want to comment on that. It's more of a question for staff.

**Francesconi:** The only other factor I'd throw in is that we, maybe unlike the transportation sdc, which actually I want to ask you about, homer, it's central city. It's not just the river district. The money goes into a pool important the whole central city.

**Hales:** Right. And every unit in the central city pays into that pool, whether it's at union station or here.

**Hales:** I'm asking for the whole central city, not just the river district?

**Hales:** Whatever the district -- you said sdc is districted because parks are very local infrastructure. That's fine. I think that was the right approach. How are we doing in that ledger for this district? I have no idea.

**Francesconi:** I was just wanting to point out it's broader than the river district. It's the whole central city.

**Hales:** So your 2800 units are a smaller share of that district, obviously, because it includes a bigger area than the river district.

**Williams:** We're still paying for the parks in the area others. Separately from whatever the allocation was --

**Hales:** You're only paying on the units where you don't have a credit. You're paying one way or the other. You're paying --

**Williams:** We are paying sdc's where we don't get a credit. In other words, there --

**Hales:** You have property outside of the development agreement where you're paying an sdc?

**Williams:** No, no. Even within the development agreement, we're going to end up paying sdc's.

**Francesconi:** He owes more than 1.2 million.

**Janik:** When we use up the credit --

**Hales:** You'll burn off the credits before you build all the units.

**Janik:** Right.

**Hales:** Well, that's fine. That's the way it should be. Because every unit bears its load. Whatever it's 1200 bucks a unit, I don't remember how much it is a unit. If you get a credit, you know, you use up your coupons, then when you're done with coupons, you write checks. That's the way the credits are supposed to work.

**Williams:** That's what's happening.

**Hales:** The question is, does -- do they get more credit for the remaining donation that they burn up over a larger number of units, and how many units are left in the central city to pay for the rest of the park. You're the only situation where I know of where we've gotten a land donation. Not riverplace, not the west end, not goose hollow. So this is it in terms of the land donation. It's the only one I can see from here either with the possible exception of a future donation in the north macadam district.

**Sten:** I would I think at this point make the --

**Saltzman:** I want to ask one more question. What is it you mean when you say you wanted to be at the table? In many respects you're at the table right now talking about an enhanced maintenance program that looks like it needs to be flushed out, but we agree it's a corn September --

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**Williams:** And that's --

**Saltzman:** Is it simply that somehow this was all brought forward without sort of due discussion about the consequences of this in terms of your flexibility where you go in terms of getting a credit for the second parcel?

**Williams:** Yeah. I think it's work in progress. And until it -- we do flush it out, I think that's where we got back to the either/or in the languages.

**Saltzman:** That's a level of flexibility that's being removed from you as you go into this negotiation over what's an --

**Williams:** Correct. And I think jim's got an interesting -- charlie -- question about what happens, is there enough. If for some reason there wasn't enough, this whole neighborhood, and we would lead the charge, ought to go out and figure out how to get it done. In other words, I think that what -- we're not trying to gut what can happen in this neighborhood by any stretch. And I think what -- but these are neighborhood issues. Yet we're the only ones here right now. And -- but I do think that in -- and when I say "at the table," if something is going to be opened up, you know, we're still all trying to get to the same place. How do we pay for these parks? And how do we do it equitably? To me, if we have to buy land, because we're selling some land, then it takes money to buy it. I'm a big proponent of sdc's. I think they're very important. And it -- but I also think when you're -- if there's other ways that we can help accomplish things, that certainly there's a currency there. But anyway. That's all I have to say.

**Francesconi:** One more question. I'm sorry, president Sten. How is the transportation sdc's? Are you paying those?

**Williams:** Sure.

**Francesconi:** The answer is yes?

**Williams:** Through the city.

**Hales:** There's a formula that varies based on transit orientation, and I assume that's not at issue, it's just a question of how it's applied.

**Williams:** I think we will -- we also signed up for an -- in -- an -- in order to help finance the trolley, for \$700,000.

**Hales:** If you have a lid. Assessment, that's -- that's the way it works all over the state, not just in the river district. If you have a lid. That's building the same stuff that the sdc would build, we don't charge the developer both, because they're paying for the same --

**Williams:** And in fact we are physically -- we are paying for the streets, the water, the sewer. We're paying for that. We're not paying for that through a lid. Or anything like that.

**Hales:** Right.

**Francesconi:** But you're not making the argument that the development agreement has anything to do with the transportation sdc. You're saying you're doing additional thing to give you a credit for the transportation sdc.

**Williams:** We are -- I can't answer it. I'm not --

**Hales:** I don't get that one either. We're the ones talking about the development agreement.

**Francesconi:** Well, maybe i'm wrong.

**Hales:** I think it's irrelevant.

**Sten:** I want the -- to ask the council to pause on discussion and ask the other side to present. Thank you. I'm going to ask the league of women voters to come up. And you've got ten minutes plus however long we question you. It's going to be more than ten minutes if this is any precedence.

**Shelley Lorenzen League of Women Voters:** With me is jan wolf, one of our new co presidents. We do appreciate your efforts to make this sdc ordinance better, and the invitation, jim, to attend

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today's hearing. In my mind is a lot of things going on right now, and I had planned to speak to two of the proposed amendments specifically. I think i'm going to reverse that another, because the first is about the credit issue specifically for hoyt street properties coming -- conveyance of the north park land. And because there's so much to discuss there, I think i'll put that last and speak first to the issue of whether we should be giving sdc credit for enhanced maintenance agreements. And I want to talk to it in the context of law and policy, not specifically to the hoyt street properties issue or the river district. We understand that these amendments are designed to achieve certain goals, and one of them is to allow these enhanced maintenance of parks to offset sdc credits. As we understand it, the developer would get the credit, but the homeowners association would be the ones that would actually pay for the enhanced maintenance program. We do not support this change. We don't think it's legally allowable under the state authorizing statute. Under the state authorizing statute for sdc's, it only allows capital improvements to be qualified public improvements. And it specifically states that capital improvements don't include the cost of operation or routine maintenance. So, you know, I don't know if the city is looking at that statute, the city attorneys, but I just --

**Francesconi:** We've looked at it.

**Lorenzen:** I just raise that with you. It seems to very explicitly say that you can only use sdc charges to buy capital improvements, and you can only give sdc credits for capital improvements. And I think if you think about it, that was something that probably the home own -- the home builders association lobbied for, because they didn't want these credits -- these sdc charges imposed and then have them spent on ordinary maintenance and operation. They wanted to see them go for something in the way of solid capital improvements that would add to the capacity of whatever that sdc charge was being levied for. Besides the legality, we certainly think it was -- that the proposal is inconsistent with the purpose and the -- in the original intent of both the state statute and the local ordinance. If you look back at our own ordinance that you adopted originally, it talks in terms of increasing capacity. And this is not doing that. This is, you know, allowing a higher level of maintenance, a higher level of programming, whatever, but it isn't going to increase capacity. The league and others who supported the passage of the Portland sdc ordinance, and we did and we were very happy to see it enacted, we did so because it was designed to give us more parks and open space. Not higher maintenance, not more programming for well-to-do neighborhoods like the river district, north macadam and the coming west end. At the expense of other areas of town. We also are very concerned that if you enact this today, we're on the verge of agreements being negotiated down in north macadam area, the west end is coming online. I can just see that every developer who owns property along the willamette greenway is going to want an enhanced maintenance agreement. And -- so they can do things to that greenway, wherever it is, that enhances the value of their property. If we start down this path of enhanced maintenance agreements, I think it's going to have a tremendous impact on the collection of sdc fees that we would like to see collected and used to increase capacity. Now, I think that commissioner Francesconi, that it's a wonderful idea that the homeowners associations or the neighborhoods support the maintenance of their own parks. I think when we were touring the new south waterfront park, we were told there was a very limited budget available at the time, I think it was only for a year, to actually maintain that south waterfront park, which is i'm sure you've all been there, it's beautiful, but it has a very high maintenance intensity with all the plantings and things. And I think it was the hope that this would become a neighborhood park. That the surrounding buildings would adopt this as their own, they could garden there, they could collect fees, and support the ongoing maintenance of the park. And I think the -- we the league think that's a fabulous idea. A neighborhood like the river district. If they want to collect homeowner fee and

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spend them on arts programming, higher maintenance, more power to them. We just don't think that the use of sdc credits to achieve that is appropriate when this was really designed both at the state and local level to be used to increase capacity. Back to the first point, we do understand that the purpose of some of these amendments is to make sure that developers don't get sdc credits -- make sure i've got this right -- that they don't get sdc credit for property conveyances under development agreements unless that has been negotiated with the developer and so provided in the agreement. It was your intent to confirm that hoyt street properties would not get credit for the north park conveyance. Frankly, i've just gotten this language very belatedly, and we would be happy to work with the city attorneys on language. But we just -- I just don't understand the new language, and that's -- that's being added to the ordinance, and don't understand how it better achieves this goal than the current ordinance language that question have now. We don't think the ordinance that's currently in effect is ambiguous. We don't think it allows hoyt street properties to get credit for the property conveyances under the river district development agreement, and presumably city negotiators are taking this credit into account as a negotiator, or will be negotiating future agreements. If you are going to change the language or add language, it's just so important that that language be understandable to the average developer, the average lawyer, the average hearings officer, judge, to someone who is reading it two years down the line and has no idea what was really intended at the time. So we just think the language needs to be -- we just need to make sure the language is achieving the goal we want to achieve. Now, may I speak to this issue? I wish we could strike the word "donation" from the discussion about the property conveyances that are required of the developer under the river district development agreement. Commissioner Saltzman, you weren't here when this was all going on, but it's -- I think we're getting -- listening to the discussion, I think we getting far too complicated. It's a very simple -- it's just a very simple line of events. We entered into a development agreement in 1997 with hoyt street properties that obliged the city to contribute \$140 million in public monies to do certain things, including tear down the lovejoy ramp, do the streetcar, develop some parks, et cetera, et cetera. In exchange, the developer agreed to do some things. They agreed to build housing at higher densities at certain levels of densities, and they agreed to convey certain parcels of land for parks and open spaces. As you have heard, the league and others were not terribly happy with that deal at the time, because we didn't think it was a very good deal for the city. But there was a full-fledged discussion, the city council voted for it, and it was signed and sealed. That -- a deal was struck. A year later, the sdc ordinance was adopted, and it's a very straightforward statute. You're an sdc -- your charge is proposed on residential development, and a developer can avoid that charge by contributing park land. Donating park land for the city. The development agreement doesn't say anything about the sdc ordinance, because there was no sdc ordinance at the time. After the sdc ordinance was -- came into effect, then the developer came and said, I would like to get that credit too. And so began the discussion. Then there was another amendment to the agreement. And under that amendment, which was in place after the ordinance was in effect, we then refined exactly what -- which pieces of property would be conveyed by the developer. Specifically where they would be located. It has been said that they are giving more park land than they had to under the original agreement. But when we -- when that's talked about, nobody ever mentioned the fact that they also got new things under the new amendment. Including an increased right of first refusal to develop certain properties in the river district. So it wasn't, again, a donation of land. It was a negotiation. Is that my buzzer?

**Sten:** I have some questions which may allow to you elaborate. Is that all right? We'll just move to questions, then. I agree with quite a bit of how you characterize it. I don't agree with a few things. I'm not nit picking, i'm just trying to set a context. I think the 140 million, for example, i'm

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not sure the entire amount of spending the council did in the tax increment is tied to the development agreement. 53 million, 52 million is affordable housing that I wanted in the tax increment district. I'm not sure that was a quid pro quo. So it's those kind of things, I don't think we traded 140 million for -- I didn't like the agreement either, because I thought it was too vague, among other things. My question is, what's your -- how do you respond to my sense that I think in some ways hoyt street properties did meet the spirit of what we're trying to do with the sdc, which is get park land and then my further-up, what's the equity question when -- whatever the percentage is, but a huge chunk -- I hope these make sense -- a huge chunk of the district didn't pay us anything for that \$140 million investment, and they're paying the sdc associated with hoyt street, pay the sdc's and make the donation. Do you see what i'm getting at? What's fair here, as opposed to what can we or can't we do, in your mind?

**Lorenzen:** Well, again, this is -- this simply is not a donation, because there was consideration --

**Sten:** I understand that. I understand that.

**Lorenzen:** For the promises made by hoyt street properties.

**Sten:** Let's call it a trade.

**Lorenzen:** So we call it double dipping. They already got value for that property, so to now then give them a credit on top of that is double dipping. The -- I think the thing with hoyt street properties, you know, the credit -- the charge is imposed on every single developer in town. Hoyt street properties was in this unusual position of having already agreed to convey the land, but having not put in their building permit yet. So then they came in and said, now we're putting in our building permit, and it says if you do that you should get this credit. But a developer who may have the week before agreed to convey some land in connection with a development project, but had already put in their building permit, would not be eligible for the credit. So you have to draw a line. I think commissioner Saltzman made the point, you honor deals. And you go -- you -- statutes apply prospectively. They don't apply retroactively unless the council so decides. And that's what happened here the. The deal was struck then. New taxes -- it happens to us as individuals. New taxes, new fees are imposed over people every day. That is life. Every developer in town has to pay an sdc fee. So while we don't think it's in the spirit of the statute because it wasn't a donation. The ordinance is anticipating donations. The ordinance is trying to inspire giving so that they can excuse -- they can avoid a fee. Hoyt street properties did not give this property to avoid the sdc charge. They gave that property to strike a deal on this other, calling it \$80 million of city money, a total package of 140 million, whatever. They agreed to convey that land for that reason, not for the sdc charge.

**Sten:** Let me try to ask it a different way and see if I get -- I suspect -- I understand your argument. I think there's some good arguments on all sides of this. At least what I try to do, I won't speak for the council, when we pass something new, we try and do our best, and the good news here is we have one or two parcels, and then we have an sdc that makes sense. When we pass things that take effect from that day, but I do try and look at what's history and what exists in the rest of the city and try and make it fair. I guess where I think it's somewhat unfair, I don't feel sorry for hoyt street, I think they're a good business that's doing good, but when I look at the district and say, okay, adjacent to the building -- commissioner Hales' argument, adjacent to the building to which there's a donation is written into the cost the homeowners pay, because it's all passed on, is a building owned by, let's say, john carroll, who is building right next door who gave the city nothing for the 80 million in infrastructure. I think he benefits equally to hoyt street properties. Certainly the argument can be that the city cut a bad deal. But aren't the buyers or the developer, whoever we want to -- however we want to figure the economic cost, in the former building paying twice, and the buyers in carroll's building paying once? How about the fairness --

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**Lorenzen:** In terms of the parks, the parks are going to be all within the property developed by Hoyt street properties.

**Hales:** So what? When they use the park --

**Lorenzen:** The primary benefit is immediately felt by the surrounding properties. It isn't like they've donated a park that's somewhere outside the limits of their property. But I guess -- I just -- to me this is so simple. It's contracts 101. We made a deal, and the -- this is a deal that was made with public money.

**Sten:** If you don't want to speak to the question, that's fine. The question is, how do you view those two buildings? Homer thinks it's simple on the other side. Homer think it's -- how do you view John Carroll's building?

**Lorenzen:** My response is Hoyt street properties has already gotten value from the city for that. John Carroll, you're saying he's getting the residual effect, I guess he'll pay --

**Sten:** His building is next door. So I think he got as much from the roads and everything, and he didn't give us anything. So clearly he should pay the sdc.

**Lorenzen:** And he's going to be paying the lid., And --

**Sten:** Right.

**Lorenzen:** The lovejoy --

**Sten:** Homer should donate the property and pay the sdc.

**Lorenzen:** He didn't donate the property. He didn't donate the property.

**Sten:** Trade the property --

**Hales:** It was exacted. If I can jump in, I need to try to get this question addressed too. I think you raised some points that the city attorney has to address. I think your point about -- you're saying on one hand, read the legal basis of this on its plain language and on its face. And you're saying, look at the law, and it says capital improvements are capital improvements, and maintenance is not add miss im. And I want Pete to comment on that. I think you've scored a very important blow, and I think it may be fatal to the question of whether or not we can take maintenance in lieu of capital when the law says capital. But sort of go back further, why do we have parks sdc's in the first place? Because local governments have had a proper of exaction. Of park land when new subdivisions were created. As an administrative convenience for parks bureaus, and as a practical matter, because some subdivision resist too small -- single-family subdivision assist where this practice evolved, not in urban districts like this one, in small subdivisions it was ludicrous to ask a subdivision developer of four or 5,000 square foot lots to donate 50,000 square feet of park land. So city started taking fees in lieu of those land donations. That's how we got to this place in terms of having a legal framework and now having a practice of exactions for parks. People were winding subdivisions with no parks, and municipalities said that's terrible. We should make them put a park in the middle. Forest heights is one of the few examples in Portland where that actually happened. And so that's boiled down into this practice of collecting sdc's. And then there was some case law on the subject where local governments were warned by, among others, the supreme court, that said, there has to be a rational connection and fairness in the donation -- in the exaction -- sorry -- and that in fact the ringing language of one of them still sticks with me. In the Nolan case the supreme court said anything short of that is a plan of extortion. So, hey, government, do it right. Make it equal, and make it, you know -- that's why it was appropriate we districted the fee. So we created this district and we said, okay. Instead of Homer Williams giving us a piece of land and John Carroll giving us a piece of land, and Gsl giving us a piece of land, we take fees from them in exchange for -- instead of a piece of land. They've given us a piece of land. Why should we ignore that? The development agreement aside, that state law and national law in the form of U.S. Supreme court decision, saying be fair, be equitable, and have a rational

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connection between what you're exacting and what you're doing, and you say, and it ought to be capitalism of improvements, and you might be right. Why do we get to ignore the land donation because we have a development agreement?

**Lorenzen:** Because the development agreement came first.

**Hales:** Does that matter to the resident of those buildings?

**Lorenzen:** I think it matters to the -- to all of us, who are -- whose tax dollars are going to pay for the obligations that were struck under that development agreement. You know, and mr. Williams comes up here and says things are going to change, we need to be at the table together. I agree with him. That is the way it goes. But when you have a deal, when you agree to sell your house for a certain amount of money, you don't get to come back later and say, you know, the market went up. I want more money for that. If you come back to the table, especially on a public deal, you've got to sit down and renegotiate that deal. We had a deal, and as you know, as you recall, a lot of the members of the public were not happy with that deal. But we -- once it's inked, we live with that and we go forward. So to have that deal unraveled with, gee, maybe after the fact we should have given them something else, that's just not appropriate. It was a very fair deal. The lovejoy ramp, who's that benefit something that's only running across their property. They got a fabulous deal. I don't understand --

**Hales:** That benefits everybody who rides the streetcar.

**Lorenzen:** There seems to be some attempt to impose a guilt trip now that somehow we got this deal and we want more, we call that double-dipping.

**Hales:** I think this is clarified. Your argument boils down to the benefits of this land exchange are particular to hoyt street properties. And the discussion about john carroll's building I think helps illustrate there's another point of view, which is the benefits are not particular. The residents of mr. Williams' buildings, and the residents of mr. Carroll's building won't be able to tell how the park came to be, but they're both going to be a hundred steps from the park and they're both going to go there. And they're going to have paid we hope roughly equally their share of the cost of that park.

**Francesconi:** There's one thing we better -- we're getting on a slippery slope in my opinion, when you compare to it all these other properties. It's my understanding john carroll paid a lot more for the value of the land than homer williams. You've got to take that into consideration when you're doing this. So I think we better be very careful going down in that direction.

**Sten:** Well --

**Hales:** I guess i'm --.

**Saltzman:** This discussion is somewhat philosophical. I'm not sure I can get any more guidance, but I am intrigued by the whole issue of, can we take these credits or sdc's, and use them for maintenance?

**Francesconi:** I want pete to come back up. Here's the answer. In my view. We've looked at this. Is there some risk? There is a little -- there is some risk, as you do anything. Is the benefited worth it from a public policy standpoint? The answer is yes, and i'll briefly touch on that one more time if you're charging for maintenance, which is what the homeowner -- what the home builders were afraid of, that you have sdc charges that governments impose upon people for maintenance, that's prohibited. We couldn't be forcing homer or anybody else additional charges for maintenance. But the city, starting with the pattern we set in transportation, has been more generous on credits. What we're going to say is, we're not going to charge, we're going to forego money, which is a vastly different thing. It's -- nothing in the ordinance prohibits us from giving up money. That's the difference.

**Lorenzen:** Well, jim, the --

**Francesconi:** We can disagree.

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**Lorenzen:** The language says, you know, that the ordinance or resolution that establishes an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement. A qualified public improvement means a capital improvement that is required, dot, dot. Come back to the definition section, capital improvement does not include costs of the operation or routine maintenance of capital improvements.

**Francesconi:** I'll have pete respond.

**Lorenzen:** More importantly, there is a legal issue there, and it reflects a fundamental policy issue, which is that these things are to be used to increase capacity.

**Francesconi:** And here's where you and I disagree. That public policy you're promoting, you said in your statement this will take away from the neighborhoods. Let me tell you, if we continue to get capital projects in the central city that we cannot maintain, like that 125,000 dollars per year that south waterfront is costing the taxpayers, we're not going to be able to afford capital or maintenance in the neighborhoods. So exactly what you're arguing will happen if you win. On this point.

**Lorenzen:** Well, jim, there -- maybe there are -- I understand your concern about the maintenance. That's why we think it's a great idea to have the neighborhoods support their own parks. But the point of this is we've got a statute in place that says -- and it was supported by the community because there is a dire need for increased capacity of parks and open spaces. And we -- i'm just -- do you see what i'm saying about what we see coming down the pike? In north macadam with that whole greenway --

**Francesconi:** First, we can argue about enhanced -- enhanced greenway and how important sit and how little government money there is to actually do that. To answer your concern, there's two ways to do this. If you noticed, the parks director has absolute discretion on -- discretion on this. And there's no appeal to take care of this. Number 2, i've asked parks to look at this issue, to see if there is a way we can propose capping the amount of maintenance per district. And they're doing that. We have an evolving sdc process, and i've asked them to prepare that if it's possible and bring it back. In the meantime, I want to get the rest of this taken care of today. So i'm sensitive to your concern.

**Sten:** Okay. Any further council questions for the league or shelly, or both? So let's open this up to public testimony. Thank you. Would anybody like to testify on this?

**Council Clerk:** We have mike hauck.

**Sten:** We're going to finish public testimony, then we'll bring staff back up. Mike hauck.

**Mike Hauk, Audubon Society of Portland:** I was here testifying before you the last instance you discussed this issue. I have participated through the whole process of development of the sdc's, in fact sat on the committee that reviewed whether or not certain credits should be given, and have also visited areas that you're contemplating acquiring. I came back here today primarily to reiterate our support for the sdc's in general. I think we should start there. That's where commissioner Francesconi started. This is a great program, last time you indicated you were going to move on the commercial and industrial -- commercial sdc's, and based on what i've heard today, given the development of the river district, that certainly would be better done sooner than later. So we're hopeful we can move quickly in that direction. My main concern that I raised at the last hearing was on the enhanced maintenance, which you've just discussed. You did put in language that added to the overall importance of the park system. We're very concerned that as shelly's pointed out, that we could have funds taken away from acquisition of land, and that is our primary interest in seeing the sdc's move forward. We're pleased that you've put the additional language in that you would have to consider the overall impact to the park system. We're still concerned that too much money could go into this enhanced maintenance that still seems pretty ambiguous to us. I'm

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pleased to hear you're contemplating putting a cap on this district. I just learned today that the sdc's that are collected in the central city can only be used in the central city. I had -- operated under the assumption there was an overall pool for the entire city, and my major concern was that enhanced maintenance in the central city would in fact take funds away from community and neighborhood parks in outer southeast and northeast, those areas we've been looking at that are so park deficient. I guess I'll just reiterate the fact that we would prefer that as much money that is collected from the sdc's can be spent on acquisition of land as possible, and we would like to see a cap put on enhanced maintenance in the central city.

**Hales:** But you're comfortable with the process of having the park director be the final --

**Hauk:** Well, I -- this is -- might be a little intel cat, but one of the concerns I've got is that we know that we all operate in a political way, and there's no question in my mind that either this parks director or some future director could come under a lot of intense pressure to approve enhanced maintenance for an area when that -- when that money should go to acquisition of land that. Is our major concern, which is why I was pleased commissioner Francesconi took my amendments I recommended last time that said the overall needs of the park system would need to be taken into consideration. I would like to make one point on whether Mr. Williams is granted a credit for the second property. And that's from the perspective of having served on the sdc advisory committee. If you're looking for equity here and -- in -- and a fair way to approach this, having listened to the conversation earlier, he was granted a credit which we opposed as an sdc advisory committee for the first property, and in my opinion going to the second, giving credits for the second property would be inappropriate. I think fairness has already been struck through granting the credit for the first property, in my opinion.

**Sten:** Your time assisting impeccable. We gave you ten minutes, but you should probably get three for public testimony, and you did that right on the nose. Why don't we have open questions from the council for Mr. Hauk.

**Hauk:** Thank you.

**Sten:** I think we probably want to bring staff back up and see what we can -- if there's a conclusion this council can reach on these issues. Okay. I guess before we open this up to questions, I might want to ask commissioner Francesconi first or the rest of the council, is there an order you want to take these amendments? I have general support for the ordinance, so I don't think there's a big question there. Is that a safe assumption?

**Francesconi:** Let me ask two questions.

**Sten:** Then I was going to propose maybe we look at each of the three amendments separately.

**Francesconi:** That's fine. The two -- here are the two. Let me tell you both. Let's take them one at a time. Let's deal with the legal argument raised by the league that we cannot give maintenance credits. Go ahead.

**Castings:** There are two issues there. One is clear-cut, the other is not. The clear-cut question is how you can spend money that has been deposited in the sdc fund, the statute is very explicit, that can only be spent for capacity increasing capital improvements. The other issue goes to what categories you can carve out as creating eligibility for credits. A credit, again, is not the same thing as expending money from the fund. It is a mechanism that avoids money coming into the fund in the first place. Now, the economic consequences of credits and expenditures can be similar, but they are economically different transactions. This is where it gets complicated and where the statute is not completely explicit. The statute does provide a definition of a qualified public improvement. One of the required elements of a methodology for an sdc is that if you have an improvement fee, it says the ordinance or resolution that establishes an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement, and then it provides a

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definition of qualified public improvement for purposes of this section. And there are several parts to that definition. What the statute does not say is whether this is the only type of qualified public improvement for which you can provide credits. The way this has been interpreted by the city has been that this sets a minimum. That the methodology has to include at least this. What we have in the parks sdc ordinance and in the transportation sdc ordinance goes beyond this. In fact, it already does from day one. It allowed sdc credits for qualified public improvements that go beyond the statutory definition. And I remember that we had this discussion when the transportation sdc ordinance was being adopted, that the council views this as a floor that has to be met, but not a limitation on overall city authority. And there and some discussion later on in the statute that you - - that it is not intending to take away local government flexibility to go beyond this minimum requirement. Further on there's a statement that says, this subsection shall not prohibit a unit of government from establishing a greater credit or from establishing a system providing for the transferability of credits and so forth. So I guess the short answer is, the statute does not say that this is the only type of qualified public improvement for which you can provide a credit. It says that your methodology shall provide for this one. It is silent on the question of -- silent on the question of whether or not you can provide for more. Portland has, from the get-go, always provided for more. The thing that is different about this proposal is that this would be the first additional type of credit that the city provides for and the statute doesn't require, that is not capital in nature. The other types of extra credits that the city allows that the statute doesn't require all refer to capital. This is the first one that's a noncapital item. But again, the statute --

**Hales:** That's for parks and transportation?

**Castings:** This is the statute for sdc's generally, and it says that we have to have all credit for qualified public improvements as defined in this section, and the question that is not specifically addressed in the statute is, what additional types of credits can we make available. We have always made more credits available than this statutory definition. Again, the -- the statute is silent on that, and on how far you can do go -- go, and if people wanted to make arguments about the intent of the statute, they certainly could. I'd like to talk with you about it, because there are a lot of issues when -- that crop up when one starts talking about this. This is intertwined with the whole area of exemptions from sdc to begin with. If one wanted to argue that you had to read this directly, it --

**Sten:** Well, thanks, pete. If you could pause for just a second, you'd like to make a suggestion. I'd like to see if we can debate -- whether or not the council is in support of commissioner Francesconi and parks bureau's proposal to allow enhanced maintenance and exemptions in the future, and then if it's not, there's no legal question. If there is, I would think that ought to be debated -- I don't think that's a policy question. So why don't -- i'd like to open it up for discussion on the policy. What's people's opinion on the policy?

**Hales:** On the --

**Sten:** Enhanced maintenance. The league argues we shouldn't, should we --

**Hales:** I think a very good legal argument was raised, but I think councilor casting walked across a big deep river on little tiny stepping stones, but he made it. And as the president of the league of Oregon cities, i'm not going to vote against local government flexibility. I think it makes sense.

**Saltzman:** I think it makes sense too, although I -- there are probably some legal risks.

**Sten:** I also am in support of -- i'm going to frankly defer to commissioner Francesconi and the park bureau's judgment. I think the intent in my opinion of the sdc is to get the resources needed to expand the park system to take care of the impact of development, and I think if your judgment is this is the best way to do it and the lawyer thinks it's legal, that's the way to go. I think we have a unanimous sense on that piece, but I think there are legal issues to be addressed. I believe that's one of the three amendments.

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**Francesconi:** I see where you're going.

**Sten:** I'm trying to break these up. There's going to be debate.

**Francesconi:** So that one is -- pete, help me -- that would be --

**Castings:** Actually, last week the council already added the language that --

**Francesconi:** We adopted that one.

**Castings:** There is one further clarification of that on today's amendments. That's number 3 on the sheet that was passed out. That's just a clarification.

**Francesconi:** That's where you added the parks facilities.

**Castings:** Right.

**Francesconi:** To make sure it's clear. So I think procedurally what I would do is move that third item that we three see and what's been handed out, that proposed amendment, so we add park to section e-6. Is that right?

**Hales:** Item number 3 on the june 21st --

**Hales:** So -- i'll second that.

**Sten:** I have a motion and a second. My understanding is if people who are here have the sheet of three proposed amendments submitted by commissioner Francesconi and the parks bureau, this would be amendment three, which is essentially a clarification of the language in the ordinance that states that enhanced maintenance which still is to be negotiated a bit, is the council's intent is to be a qualifying offset for the sdc. So i'm going to -- since these are contentious enough, i'm going to ask for a roll call on this amendment. Roll call.

**Francesconi:** And i'm going to vote in favor of it. Technically what we're doing is making it clear that it's park -- park facilities that will be maintained as opposed to other facilities. Aye.

**Hales:** Aye.

**Saltzman:** Aye.

**Sten:** Aye. The amendment is now included, and now i'm going to ask the council to move discussion -- let me try and clarify something. I think we have two amendments that have been submitted as possible amendments, and I believe -- this is where i'm not sure -- they both have to do with clarifying the issue with past development agreements. The issue on the table is how to deal with past development agreements, and I will not rule out that there's something else out there that escapes us this morning, but my understanding is it's really a policy issue designed to deal with the question of the property in the river district. Is it fair -- that fair? I'd like to open up this discussion on that specific question.

**Saltzman:** I'm going to support the amendments. Although I certainly haven't been around this discussion as much as everybody else has here, but as much as I do see sort of the larger, what's fair issue in terms of the description commissioner Sten used of a homer williams property right next to a john carroll property, one paying sdc's, well, both paying sdc's and one not having -- I won't say donated, but conveyed property, I see there's a larger fairness issue. But I also do ultimately believe that my understanding of this whole process and the river district approval plan that these parks -- conveyances really are part and parcel of coming up with a deal. And that should not necessarily be considered as subsequent as donations eligible for sdc credits.

**Hales:** I can't get there from here. I think it turns on a question of what's the sdc for. It's for acquiring and improving land for neighborhood parks in the neighborhood. What do we do with the money? We buy land and improve it. So the property owner in this case is deeding over the land that we would otherwise have to buy, other property owners don't have to do that, so their residents would pay twice. Who pays sdc's, by the way? Not developers. Renters and home buyers. So ultimately that's who pays this charge. And then we're admitting, I presume, that we expect the sdc's in this district to cover the capital cost of the parks if we're considering a creative

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arrangement by which we're accepting maintenance in lieu of capital dollars. I've gone along with that. I think pete made an elegant argument to how to get there from here. The fact you want to go there implies the parks bureau believes the revenue is forthcoming to do the basic acquisition and construction of these parks if prior to all that we're asking one of the developers in the district to consider paying for their maintenance. You could describe that as gravy from a capital standpoint. It's a responsible move. I voted for it. But we're admitting by doing that that the money is going to be there to build and maintain the parks, and if this property owner is donating a piece of the land we would otherwise build -- buy and maintain, then I can't justify charging him twice. So I won't support that amendment.

**Sten:** I'm still torn, so we'll see when this goes to a vote. I generally think hoyt street has met at least a chunk of the spirit of this, and I think it's important to remember that once they use up the credit they're going to start paying the sdc. And I don't think that's in dispute. My general feeling is something is warranted for the donation of this property on the theory that as I look at the district, I think the other property owners haven't given as much, and I understand it was a trade, but -- and i'm not a huge fan of that agreement. I'm a huge fan of the district. Not of the agreement. So i'm open to some consideration for this, but i'm not sure what it should be. And I think some of it, through the enhanced maintenance, which I understand hoyt street is going to do some version of, I think is fair. So I think some kind of offset is going to be there. I wish I knew, since it's one piece of parcel, what would be fair. My own personal kind of what's fair, I don't think it's fair to get a credit for today's value of that property. I don't think that's fair at all. Maybe a credit for how much it was worth when the sdc went in place, or better yet a. Credit for how much it was worth when the development agreement was signed. I think those are three big different numbers. Otherwise you've got an incentive to not donate to us for -- as long as possible, because it keeps appreciate. That was my argument with the treatment in the first place. If people recall, I have no qualms with the idea the city should pay the cost of the affordable housing. What I had a problem was with the basis that would determine the cost is the appreciated property value. So I could see a number in there that -- but I don't know what it is. So i'm having a hard time, because I think some consideration is fair, and i'm in a yes or no vote.

**Francesconi:** Let me help you on this. Again, I stand by the amendment that I offered, i'm arguing in favor of not giving a credit on the second. I think you hit on something that's really important here. To me, at least, as to how I got here. The question is to try to do what's fair. I think if homer is going to do additional maintenance, it's fair to take the park, not give additional maintenance, would not be fair to me. So we dealt with the maintenance side. On this part of the parcel, the problem is, he did get the land at a cheaper value, and he got credit, though, of the \$1.2 million after all the improvements were put in. Because we didn't have the language in the ordinance to prevent that. Now, we're taking care of that so it won't happen again. But on this balance of what's fair, that's why I came down in a close call on not giving the credit on the second. We had to do it on the first, in my opinion, because I disagree with the league that the language of the ordinance required it. And the appraisal system is that you appraise it at the time the property is conveyed. Now we're going to change that, but the truth is, he got a million two, and some of that was from our public improvements. So on the balance of things, that's ultimately why i've come down on a close call in not giving a credit on the second, but there's another way that will advance the purposes of the park system to take care of this situation. That's why i'm going to vote aye.

**Sten:** Let me ask a clarifying question. If this amendment fails, what does the ordinance stipulate for this piece of property in the river district?

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**Francesconi:** Well, then it gives the option -- correct me if i'm wrong -- it goes back to the or, which is in the statute, and it gives the option to the developer. Which I don't think is what we want to do.

**Sten:** Does it speak to valuation of the property, or it just says they get a credit but it doesn't determine --

**Francesconi:** It would be valued at the time -- I don't know the answer. Go ahead, pete. I don't now how -- we didn't have an appraisal back then, is the problem. So I don't know how you would retroactively go back to an appraisal. I don't think we can do that.

**Castings:** The -- I don't think that would happen. If the second parcel were to qualify for a credit, we would need to walk through the analysis, it's a complicated analysis, but I think the way they would do it is through the section that talks about conveyances of real property interests, or capital improvements required as a condition of development approval. If you don't adopt the amendments that were proposed this morning, the phrase "required as a condition of development approval" will be very broad. And it would include features of a development that are specifically stated as an element of a proposal that is approved by the review body. My understanding, without having gone back and looked at the documents, is that Hoyt street properties believes that that second parcel is a feature of a development that was specifically stated as an element of a proposal approved by a review body. So that would provide a mechanism for them to satisfy this element of the definition. Now, again, it's a complicated definition. I'd have to walk through and look at each piece.

**Sten:** How do you get at what's that's worth? As I understand the sdc, it's a certain amount per unit. Am I right? Okay. So that -- the amount divided into how much of a credit they get determines when they're going to run out of credits. I'm quite certain -- how much is it per unit?

**Williams:** For multiple it's about \$900. Is that the exact fee? It's right around 900. 14 for a single family.

**Sten:** So \$700,000 for an -- a big chunk.

**Hales:** How does it get valued?

**Castings:** The credit gets valued fits a real property interest based on a certified appraisal.

**Francesconi:** We don't have any certified appraisal now. So it would be on today's prices. So we're back on the first situation.

**Hales:** Appraisals can't determine past value?

**Castings:** That's one of the issues in the current appeal. Hoyt street properties hired an appraiser who valued it based on current highest invested value permitted under the zoning that. Number was higher than the parks bureau was anticipating, so it hired a review appraiser, somebody who was recommended by metro, and is an expert at values open space, and he came to the same conclusion, that under the rules of appraisal, as he understood them, you don't look at restrictions on the property under the development agreement, you look only at the law and if the zone can code would allow use other than open space, that's how it got valued. So the developer --

**Hales:** That's not the issue.

**Sten:** I think that was correct, and I think given the old existing statute, I should stay, rather than old --

**Francesconi:** That's what I think too.

**Sten:** I think the credit was correct, and I think they got -- I think under the sdc, you know, they have some -- what I was trying to get at is what I think would be fair, which is an entirely different matter than what the different proposals -- what I think is fair and what the proposal are different matters. So I was saying I think something -- i'm having a hard time with it, the credited should be at the developer's choice, appraised value whenever you decide to appraise it, developer, and -- or

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no credit. That's the choice i'm having a bit after struggle with. I think some credit is in the spirited, in my opinion, of what the development agreement did, but sort of an unlimited -- not unlimited, but --

**Hales:** Our ordinance doesn't specify an appraisal procedure for property that's donated in lieu of sdc's?

**Castings:** Right now what is in the code simply says that real property interests are valued based on a certified appraisal. The language that the council added last week, or approved last week, contains special rules for property conveyed pursuant to a development agreement. And if you're talking about a development agreement --

**Hales:** I mean the original ordinance. We adopted this ordinance a while ago.

**Castings:** It says real property interests will be valued based upon certified appraisal.

**Hales:** There's no appraisal? Nobody appraised this property?

**Castings:** Not until they came in -- the first appraisal parks saw was when they came in and applied for the credits, I believe.

**Hales:** This property has been -- all kinds of transactions and nobody has appraised it?

**Castings:** I don't know what the private parties have done. I think the appraisal that came in with the application for sdc credits was probably the first that the parks bureau saw.

**Hales:** Whether we've seen it or not doesn't mean there is one. Let's ask mr. Williams is there an appraisal that could be submitted? On the property that's in -- on the property that's in discussion?

**Williams:** We've had an -- we've had appraisals -- one block north of lovejoy.

**Francesconi:** Commissioner Sten, there's no -- I don't think there is one. Because you have to -- because it has to apply to more than one person. You can't create --

**Hales:** You have to accept their appraisal.

**Sten:** Okay. So does anybody have any further questions from anybody, or would -- is the council open to mr. Janik proposing something? It looks like he's -- come up, mr. Janik.

**Francesconi:** Well, yeah. If we do this, I think we should then give some time to the league to come back too. If they want.

**Janik:** Just a suggestion. The problem is nobody knows the value, it will be valued based upon an appraisal, one option for you is to say that the dollar value of the credit is something less than 100% of the appraised value.

**Sten:** Okay. Can I ask you one question? In terms of the enhanced maintenance that hoyt street is -- I think we've established that enhanced maintenance is going to be an offset of this program. Is hoyt street -- I guess what i'm worried about, if this amendment didn't fail, and hoyt street gets an or on this, they come in and 8, we're done. We're now not going to do the enhanced maintenance. I'm comfortable getting some credit for the enhanced maintenance. I'm even comfortable with some credit -- but I would hate to set up a deal where the enhanced maintenance just goes bye bye because -- am I making sense? Did you hear that?

**Francesconi:** No.

**Janik:** What hoyt's intent --

**Williams:** Actually, the enhanced maintenance was our idea. I think -- we think it's an integral part there, or riverplace, or anywhere else. These parks -- it's going to have a huge impact on the value in the life that everybody is going to be living down there. So we do think it's important.

**Hales:** Granting a credit --

**Janik:** Granting a credit will not dissuade hoyt from doing the enhanced maintenance.

**Sten:** We don't have any sense of what that enhanced maintenance will be worth.

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**Janik:** But we have had a good working session with the park bureau to talk about how you define the enhanced maintenance and how you value it, how you bring it back to present value and how you develop the have it amount.

**Sten:** Okay. Let me see if I can ask this question in a way that makes sense. I'm not sure that I can. We've already voted through the enhanced maintenance piece. That's an opportunity to get some credit. I think that's a good thing. I'm of the mind-set that -- i'm dealing with what's fair. What's legally owed you is going to be probably determined in other forums. So i'm not dealing with what's legally owed you. From a fairness standpoint, just my personal conclusion, I believe that you ought to get some credit against the sdcs even though it was a trade for -- for a trade, because I think I look at what other people in the district are going to pay versus what you're paying, whether you're double dipping or paying twice is a matter of opinion, but there is some middle ground. I'd like to give you something. I'm uncomfortable that you get sort of whatever it's worth five years after we signed the agreement, plus enhanced maintenance. Is your sense how this whole thing could be shaped up, what you're looking for on this, is there any --

**Janik:** My suggestion is that if you're uncomfortable giving a credit in today's appraised fair market value --

**Sten:** That's not a legal issue.

**Janik:** Not a legal issue. Policy issue. You could say that the amount of credit to be given is less than 100% of today's appraised fair market value. With respect to the enhanced maintenance, just so nobody misunderstands here, to get the enhanced maintenance credit requires the developer signing a long-term contract obligating itself to pay and do things over a long period of time. Which again, hoyt street wants to do.

**Sten:** My difficulty, i'm the one struggling on this, without knowing what the enhanced maintenance is worth, it's hard for me to come to a conclusion of whether or not the balance in eye opinion, which is all we're dealing with, is fair. If enhanced maintenance is worth 10,000, I think he's deserved something more. If enhanced maintenance is worth 700 that you believe the property is worth, I don't see any reason to go beyond the enhanced maintenance. Do you see what I mean? We've got a set of action to -- actions to take, and they've been deemed to be worth something by the parks bureau to you. If they're worth the credit you're trying to get, or some version, something substantial, i'm satisfied. If they're not, then --

**Francesconi:** Well, what --

**Sten:** I've got questions left.

**Francesconi:** I was not in the meeting, but -- and I have not been even briefed about the details of the meeting. But it was my understanding that the discussions -- it depends in the negotiating process, part of the reason is depending what you do, commissioner Sten, you strengthen one side or weaken's one side's negotiating process. What we were negotiating with them could have been, it's pretty flexible. We weren't talking about 10,000. If they do what could really benefit, the potential could be two, three, four, five, \$600,000. We were talking about I think the discussion was of that magnitude. Now, it depends. The parties haven't reached any agreement, but we weren't talking about 10,000.

**Janik:** If I might, the value of the enhanced maintenance credit is a function of really three things - - number 1, what you agree to do each year and the cost of that. Number 2, how many years you agree to do it for. And number 3, the discounted present value, bringing that back and depending upon the discount rate. If you agree to do enhanced maintenance for one year, and the degree of enhancement was one activity, then the amount of the credit would be relatively small. If on the other hand you agreed to do something for 20 years and the number of enhancement activities were multiple or significant, then the credit amount would be commensurately larger.

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**Francesconi:** The waterfront park is 125,000 dollars a year. You project that over 20 years, that's a lot of money. Then you discount it back, and it's a whole lot more than 700,000. I haven't done the math on the discount value.

**Sten:** Right. Well.

**Williams:** I'm not sure if we're talking about 125,000 a year. In other words, what we're dealing with, there are going to be a series of individual parks that have individual requirements. And I think that -- i'd like to see this get through. I think the enhanced maintenance program is a program that should happen. So we are in favor of that. But I don't want to get in a situation where it's trying to do something more than it should be doing.

**Francesconi:** I agree with that.

**Williams:** And so, you know, maybe a compromise would be that we would -- we already are not getting full credit. When we appraise, it's already a lower percentage. But whatever that percentage is --

**Francesconi:** 50%.

**Williams:** Maybe we take half of whatever that would be. And so we use that, and then we have the enhanced, and so it's -- do you understand what i'm saying?

**Francesconi:** Credits are at 50%, I think, of the total value.

**Williams:** We're not getting full credit for the full value already.

**Francesconi:** I think that was based on the transportation sdc.

**Williams:** Yeah.

**Sten:** Let me -- this question is really for -- it's kind of far parks, but it may be more for commissioner Francesconi. You're kind of the same, but different. My personal belief is, and that's all we're talking about, and -- I know it's not -- the league of women voters isn't going to agree, but I believe that some amount of credit for the trade is warranted, as I look at the whole situation. The reason i'm not yet taking a position on the amendment is the way I view the situation, if I vote no on the amendment, it fails. At least the way the votes are lined up now. And homer can simply opt to count the property as a credit and it's your choice, homer, what you do. I understand that's not -- you're planning to do the enhanced maintenance and everything else. If I vote the other way, parks, I don't think you've done your work, and i'll not sure you would have. I think this is an oddball situation. You can't tell me how much even in rough figures are the other buildings going to pay, what's the total cost to achieve the goal, although I know the district is bigger than the central city. I can't come to a very rational judgment on how I should value my belief that you ought to get something. Do you see what I mean? I'll make a choice in a second if there's no compromise, and we'll call the roll and have a vote. I'd like to see some way to work this out. One thought i'm having is that enhanced maintenance is in there, and I hate to do this to the council, but that you can qualify for some credits subject to a council vote on the number -- I don't know if this is legal -- at a public meeting, so -- I think the issue -- there's perception out there that's been fueled that somehow you're trying to put one over on us. I think what's happened is there there's -- there's things that don't come together. I'm more than willing to put my name on that you get some kind of credit, but I can't defeat the amendment and put it totally in your hands.

**Francesconi:** I understand --

**Hales:** I understand your point. This is an opportunity for that.

**Santner:** Commissioner Sten, I would like to understand your question. Let's assume this property would be valued at a million dollars. And the developer wants credit for it. So he would be entitled to \$500,000 of it. And what you are asking is whether this developer can get \$250,000 credit in cash and the other \$250,000 in enhanced maintenance. Is that what your question is?

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**Sten:** I think -- my own personal belief is that he ought to get some kind of credit against -- he's going to pay a ton of sdcs, because he's going to build a lot of units, and each one owes you \$900. I think he ought to not pay some amount of that because of the property donation, trade, extortion, whatever it was. And whoever ripped off who, he ought to get some credit against the 900 bucks, but I don't think it should be an unlimited credit, and it should be more than 10 grand. This is so abstracted, I can't think of any way to value what I think he ought to get.

**Santner:** I think what we are considering as a credit is when this property owner comes in and says, I have 500,000 dollars worth of credit that I would like to get from you, and I would like to apply towards maintenance, we'll find out what the level of enhanced maintenance and the value assigned to it per the formula that mr. Janik was describing, and then determine how much that \$500,000 enhanced maintenance we will be able to buy over how many years. So you -- he will basically be able to get credit for that half a million dollars through enhanced maintenance over many, many years. That's what this ordinance is for.

**Sten:** I think that's terrific, and it's a good compromise. I think he ought to get some credit for the trade, donation, whatever it is.

**Francesconi:** Where you and I disagree is, and we do disagree on this, commissioner Sten, I think he's already gotten extra credit on the increased value of the land, which allowed a million 2-5 on the first donation, and I think we've given him an opportunity to get a credit for doing the enhanced maintenance this we need, but what I think you're trying to do, and I appreciate it, and reasonable people can differ on this, and the fact i'm the parks commissioner is not the issue, but it's what we think is fair. What I think you're trying to do is give him a credit. Well, for the land itself, when it will then listen -- lessen his incentive to do the enhanced maintenance, and I don't think we can do that.

**Hales:** The value of the first land donation was discounted at 50%?

**Santner:** Yes.

**Francesconi:** That's true for everybody.

**Hales:** You city think we were inadvertently overly generous in how much credit we gave him, and we had a 50% --

**Francesconi:** You've got to apply it uniformly. I don't know what the value of the land is, but --

**Hales:** You think the land value rose by more than 100%?

**Sten:** Can we call the Council back to order please.

**Francesconi:** I think that on the issue of whether our public improvement that's we negotiated in a deal with the river district agreement, I think that also contributed to raising the price of the land.

**Hales:** Right.

**Francesconi:** And I think on that issue I agree with the league.

**Hales:** The question is would be more than 50%?

**Francesconi:** No, because the 50% applied to everybody. So to me that's irrelevant.

**\*\*\*\*\*:** Commissioner Sten, following up on your approach, one thing you could do, you could adopt a one-sentence amendment that said, with respect to properties covered by existing development agreements, the amount of the credit will be established by the city council. I think that creates a very small subset of --

**Sten:** One? [ laughter ]

**Hales:** I think that's a valid suggestion. What you're saying, jim, we -- this is judgment, not -- it's not -- I retract my earlier statement about accounting. It's not accounting. It's judgment. Because you're saying to some extent you factor in the development agreement. X percentage. I'm not asking you to name the percentage. There's an x factor here of the development agreement. Fair

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number. That means -- fair enough. We ought to negotiate something different than 50% in this case. Something more than zero and less than 50.

**Francesconi:** I would submit we already have. And I don't want to do it again.

**Hales:** I guess I don't understand that. I thought it is zero, or all or nothing at this point. If we adopt this amendment --

**Francesconi:** It's because of the first --

**Hales:** You're saying the first one covered it?

**Francesconi:** In my judgment. Not science.

**Sten:** Well, okay.

\*\*\*\*\*: If you took what steve suggested, what that would do would give us an opportunity to go ahead and try to work through this without souring everybody else. If for some reason it really --

**Sten:** I think we've got the issue. Thank you. I think if -- for the -- if the council wants to call you up, you -- would somebody like to hear from shelly?

**Francesconi:** Is it limited to this precise issue?

\*\*\*\*\*: Yes.

**Francesconi:** Come on up.

**Sten:** Please come on up.

\*\*\*\*\*: Just on the valuation issue, that's another issue on appeal, it was appraised at full market value, but the appraiser made an assumption that the property was available for development as a mixed use parcel. That, again, we need to go back. The agreement was in place before the ordinance came down. The land was committed to park land, both on the site of the development as well as the city. So we think the appraisal was just done incorrectly. It should have been appraised as park land. The appraisers, I think were given assumptions by their clients to use and they were given an improper assumption. This is not the typical taking scenario where you take land, say, to add to your greenway or whatever, and then, yes, of course you value it at the highest and best use that the take could have used it for. This property was committed to be given to the city under a contract to be used as park land. The city can't do anything with it, but use it as park land. So to your fairness issue, I think that hoyt street properties has been more than fairly compensated for that first piece of property when they got valued at the highest and best mix used value. We think that was wrong and we're arguing that in the appeal. But if you're trying to come to some number, I would suggest that you value it as fair unimproved land that can be only used as a park. Because that was the deal that was struck.

**Sten:** Okay.

\*\*\*\*\*: I guess --

**Sten:** Don't give a credit, but if we're going to do it, do it that way.

\*\*\*\*\*: If you're going to do it, we would suggest you value it as bare unimproved land.

Commissioner Sten, i'm having trouble understanding how you don't think the river district development agreement was a good deal, but you still want to give some credit.

**Sten:** With all due respect, i'm trying to decide which way to vote on the amendment, and it's not my duty to try and make everything make sense to you.

\*\*\*\*\*: I think i'm just trying to support jim on his point that they've already gotten a huge credit, based on a valuation that vastly overstates the value of that property. So maybe you could feel good about the credit they've already gotten because it was valued at a mixed use level rather than a bare unimproved level.

**Sten:** Okay. Thank you. Any further questions?

**Hales:** You're challenging that. This could be thrown out.

\*\*\*\*\*: It's going to be, yes.

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**Francesconi:** That raises a question I had for pete.

**\*\*\*\*\*:** We'd hate to have to appeal a second.

**Francesconi:** That raises a question for pete. What happens if it is thrown out, the first -- thank you, shelly. I think we're done.

**Sten:** Thank you.

**Francesconi:** Where are we -- let's say that the league is correct. I don't know where i'm going. I don't know the answer. But then the first -- then where are we?

**\*\*\*\*\*:** There are several options. The code hearings officer can affirm the parks director's decision, can reverse it, can modify it, send it back for reconsideration, so those are all things that could happen. It's also possible that the hearings officer's decision could be appealed, circuit court on rate of review. The short answer is, there are at least five options of things that could happen.

**Sten:** Let me ask from the other side, let's say the developer prevails. I mean, is what we do today going to hold if the hearings officer decides that they got the credit?

**\*\*\*\*\*:** Again, the hearings officer's decision may be appealed, so we would know after the appeal.

**Sten:** I retract the question.

**Francesconi:** I think we're changing the statute. But I guess -- let me see if I can frame it this way. We are assuming we have to change the statute. I'm assuming we have to change the statute in order to take away the credit on the second parcel. So I don't think the hearings officer's -- it would change our result, but let's say the hearings officer said the original statute did not grant a credit. Then is what we're doing really moot? You see? Because --

**Sten:** If the league prevails.

**Francesconi:** Because then we have an -- we haven't amended that portion of the statute.

**\*\*\*\*\*:** It would depend on the basis for the hearing officer's decision. This case has not been briefed yet. I understand there are going to be several arguments raised, and we don't know which of those arguments if any might prevail on appeal. The hearings officer might decide there should be a credit, but that the appraisal was wrong, in which case the amount of the credit would be different. Hearings officer might decide that there should be no credit, because it's preempted by the development agreement. If that's the decision, the second parcel would fall under the same analysis.

**Francesconi:** Okay. So what I think, because the council, including me, are making decisions assuming essentially that the first credit is going to be granted, I think we should still proceed on this present course, but we can't anticipate what's going to happen. Given this discussion with the council, once we hear from the hearings officer, or ones the appellate process is complete, then we'll assess where we are and make some recommendations to council on this, given this discussion. But I still think the best course is to move forward now with this.

**Sten:** Commissioner Francesconi has been right in the middle of this mess has been very clear. Those amendments are before us in writing. I think we need to move towards making some decisions, so I guess i'll open the floor for either motions on those amendments or other motions, if somebody would like to try to craft something different.

**Hales:** Commissioner --

**Sten:**

**Saltzman:** Commissioner Francesconi, if I understood what you just said, if the valuation of the first parcel and maybe whatever rulings emanate out of this whole case, result in some changes to our present assumptions, you're willing to take a look at the larger issue of what's fair in terms after credit for hoyt street properties and perhaps come back to us on that matter?

**Francesconi:** I want to emphasize take a look and perhaps. I don't know what i'm going to do.

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**Saltzman:** Okay. I'm basing my decisions today on sort of -- we're all basing them on some assumptions.

**Francesconi:** What i'm trying --

**Saltzman:** Some of those get thrown out, you're willing and perhaps --

**Francesconi:** Because I hear the sense of the council. I'm trying to act as a member of a body. So yes. I'm going to move the amendments both one and two.

**Saltzman:** Second.

**Sten:** I have a motion and a second. Roll call.

**Francesconi:** Again, i'm going to end where I started. The sdc's are good. We're getting good parks in the river district. We have a good developer. We have a league that's advocating for parks. And I appreciate all of you. This is a close call. This is a difficult call. It involves money, and that's legitimate. They're legitimate issues. I do think we've taken care of some fundamental issues that think won't happen again. I think we have improved it, because we have a capacity now, use sparingly and carefully to provide enhanced maintenance. I think on the balance, the closest balance I can come to try to strike some fairness, i've done to the best of my ability. Aye.

**Hales:** I think, again, just to sum up my feelings about this, every resident of the district ought to pay once. Not twice. If we didn't have our act together in terms of when we appraised and evaluated property, that we agreed to accept, I don't know why we make that someone else's problem. No.

**Saltzman:** Aye.

**Sten:** Well, I have been trying to avoid this vote, as people can tell from all these questions. I'm going to apologize to commissioner Francesconi. I'm just on a slight nod on the other side of commissioner Francesconi is. I think some -- something is warranted. And i'm not ready to close that door. I am relying pretty heavily, homer, on your representation that you're going to do the enhanced maintenance anyway. A lot of this is about what's in agreement, and I cannot like a deal and still think it's a deal. That's the short answer to your question, shelly. I would very much be open to supporting other amendment that tries to take another stab, but i'm going to vote no on these amendments. And i'm uncomfortable in that we only have four commissioners here. So I vote no, and I think the amendment fails on a 2-2 vote. So i'll open it back up for further motions and/or -- does this move to second reading if there's no more? Would anybody like to propose any other amendments?

**Francesconi:** Let me talk to parks a minute f. That's all right.

**Sten:** Do you want to recess for five minutes? We're going to do the budget, but we're going to finish this one.

**Item No. 868**

**Sten:** If you could give us a brief presentation.

**Mark Murray Financial Planning:** That was going to be my question. Do you want a presentation at all will have Jordan run over what he did real quickly.

**Sten:** Quickly. Short presentation.

**Jordan Epstein Financial Planning:** This is the spring major supplemental budget, which totals \$a lot -- some of the fund resist dead funds. The supplement recognizes additional revenue which will be used to support additional debt payment. There are two -- there's the health insurance and insurance and claims fund, which will be increasing their funds for their expenditures for claim costs, moving money from contingency. The housing investment fund, \$5.6 million being recognized in beginning balance, 3.2 million will be used to cover payments to pdc and 2.1 appropriated to contingency for future years' obligation. There's also money from the enterprise foundation, 2 million in loan proceeds, used by pdc to buy land under the smart growth program.

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And the spectator facilities open -- operating fund, they're going to recognize about 865,000 from additional parking and users suite rental revenue, plus 4 plus million for contingency and shifting a million from capital outlay that was going to be done not coliseum, they're going to put all that money in the civic stadium redevelopment project. That's mainly what's going on.

**Sten:** Questions from the council? Would anybody like to testify on this item? Roll call.

**Francesconi:** Aye. **Hales:** Aye. **Saltzman:** Aye.

**Sten:** Aye. Passes. 869, please.

**Item No. 869**

**Mark Murray Financial Planning:** I see larry has stepped out, so i'll cover this. The primary portion of the process is to clean you year-end items, make sure the budgets remained balanced, there's no overexpenditure problems. And in -- and also the main portion is to cover possible carryover items in order to ensure the bureaus do not spend dollars this year that they actually want to spend next year. We actually do the carryover ordinance to take it out of this year's budget, and then put it back in the budget that you will vote on to adopt next week.

**Larry Nelson Financial Planning:** Have we talked about the new requests? They are probably \$1.5 million in new requests. 500,000 is from the -- to recognize interaccountancy revenues from insurance claims funds. Information technology, and the pension funds for various projects. Also the police bureau is recognizing \$500,000 in grant revenues, for police corps fees and the columbia villa housing authority of Portland project. Grounds for general fund contingencies. These are approximately 180,000 and these request from -- for city code update project, appropriations for nonrep class comp study, which is our own bureau, and the office of planning and development review for appropriations for the noise review task force. There are technical requests included in this supplemental budget, and the -- they involve five bureaus, transportation bureau has about 1.2 million in technical adjustments, these adjustments are necessary for transfers for the completion of various capital projects. Also the same can be said for the water bureau as well. We're going to the minor supplement yacht budget. Which is also included in the spring. This year the general fund is going to increase by \$1 million and this is due mostly to the recognition of revenues from the parks bureau, which include the sale of parks land and also revenues associated with the southwest community center. In addition, this supplemental also recognizes about \$155,000 for the police bureau for reimbursements for the photo radar program. The last transaction is for the operating fund, the fund is going to recognize approximately about \$7 million in steward connection fees, this is associated with the increase in sewer connection charges related to the projects. And this is a result of the closure of the year-long grace period in which to connect to the sewer utility system. This fund is going to transfer the appropriation to the sewer construction fund.

**Sten:** Thank you. My understanding, there's one technical amendment?

**Murray:** That's correct. The fire bureau was, since you received this, was able to encumber the funds, so they will no longer need the \$1 million carryover, so we need to ask the council for a move to amend the ordinance, dropping that carryover request of \$1 million.

**Sten:** The clerk has a copy of the technical amendment. Are there any objections? Hearing none, so ordered. Would anybody in the public like to testify?

**Francesconi:** I need to ask a question. Parks was -- i'm afraid i'm not prepared. I was focus order this shore issue. Parks was preparing an adjustment, they needed to hold some carryover in order to purchase -- in order -- help me. How have we done with that request? Is that in here? Is that taken care of, that issue?

**Nelson:** Part of it is being taken care of within this bump. The part you're speaking about will be taken care of in the adopted budget.

**Francesconi:** Thank you for helping me out.

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**Nelson:** We're working on it right now.

**Sten:** The amendment is in there. We put the amendment in, and now i'll open up the hearing for public testimony. Would anybody like to testify on this item? Looks not. Roll call.

**Francesconi:** Aye. **Hales:** Aye. **Saltzman:** Aye.

**Sten:** Aye. And that -- 869 passes, and let's return to -- and reopen our hearing on -- I don't have the number --

**Item No. 905 (reopened)**

**Sten:** The question now is whether any council members -- we're either going to move this to second reading or i'll accept any new motions. Is there any new motions on the floor?

**Francesconi:** I guess I talked to parks. I want to be clear about something. I would prefer offering no additional credit. What parks and I have come up with is some language that says -- let me hand it out. What it does is, it adds a section 4. It says, notwithstanding any other provisions of this section, the audience that doesn't have it w. Respect to conveyance of real property interests, specified in development agreements adopted before June 21st, 2000, the value of the have it will be 25% of the appraised value of the real property interest. So instead of being 50%, it's 25%. Now, let's me also clarify that it's or, the section we adopted earlier, so there's no misunderstanding about this, if you get a credit under this section, you don't have the option of doing enhanced maintenance. It's an or. You don't get both. Mr. Janik, do you understand that? Do you agree with that, Mr. Janik?

**Janik:** No. I don't see what you're referring to here that says that.

**Francesconi:** It doesn't. In the earlier -- Pete, come back up. I want to make sure there's clarity on this. And agreement.

**Castings:** I think you might be referring to the or that council changed last week. This was an amendment proposed today that didn't pass, so it means we're back to what the council had last week, which is this. With -- I think the "or" you're referring to is in definition 17.13020, suba-4-c. And that's the section that defines what the phrase required is a condition of development approval means, and as amended, last week, it means requirements to construct improvements that are specifically listed as a condition on a decision, or features of a development that are specifically stated as an element of a proposal that is approved by the review body, which I understand people understand includes the second parcel that Hoyt Street properties is going to convey. So this would do as I understand the facts of this second parcel, would be to create eligibility for parks sdc credits for that second parcel. The amendment that you just distributed would say notwithstanding the general rules for valuing real property interests, in section 17.13070, if it's a real property interest specified in one of these preexisting development agreements, the value of the credit is going to be 25% of the appraised value rather than 50%. As for eligibility for credits for enhanced maintenance, that is a separate section which the council added last week, and it said that the term "qualified public improvement" includes agreements for long-term enhanced maintenance, subject to a number of conditions, including the parks director's discretionary decision that it's in the best interest of the park system. So the parks bureau could always say no.

**Francesconi:** But it doesn't -- well. How long would it take to you draft something that says either you can go with this 25% or enhanced maintenance, but you don't get both?

**Sten:** It seems to me like -- Hoyt is going to come in with an undetermined amount of units at this point, all of which have to pay sdc's, so I am comfortable with him getting 25%, if that's -- it's just a number, but I think that fits my instinct of something that's fair. The enhanced maintenance would be up to the park director whether on a later building where they have to pay sdc's they could trade that for credits.

**Hales:** That's in lieu --

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**Sten:** I'm not sure how we would make them all --

**Hales:** You can't prebind them to -- it's in lieu of paying their sdc or exhausting --

**Sten:** They have to pay the sdc on every unit. The question is what can they do to get a credit. I'm thinking out loud. To get a credit they'd have to have an agreement with the parks director, right?

**Francesconi:** Here's where i'm at. I'm not going to support this unless there's not a majority for this. The reason is, this is now better than what I proposed before, but it's not what I think we should do. I just want to be clear with everybody.

**Sten:** Let me ask mr. Janik, i'm trying to get at what's fair. The 25%, is it fair to hoyt?

**Janik:** So long as it's not linked as commissioner Francesconi is suggesting to denying a credit for future enhanced maintenance. Those are in our mind two separate things.

**Sten:** Okay. So let's see where we stand. Do I have a motion?

**Francesconi:** You don't want --

**Hales:** You don't want to move the amendment? I'll move the amendment.

**Saltzman:** Second.

**Sten:** It's been moved and seconded. Is there further council discussion? I'm going to ask for a roll call then.

**Francesconi:** No.

**Hales:** Aye.

**Saltzman:** Aye.

**Sten:** Aye. That amendment passes. I'm not sure why -- this is a strange hearing. Are there any further amendments that would be proposed?

**Francesconi:** No, I don't think so. I think we're all taken care of. And so for -- if everybody is clear, next time will be a second reading, and we're done.

**Sten:** I guess let me double-check with pete or ben, can we move this to second reading at this point?

**Ben Walters City Attorney:** Yes.

**Sten:** In that case, i'm going to close the hearing, move the ordinance to second reading, and push everybody -- wish everybody a good lunch.

**Francesconi:** I just want to say, you did an excellent job of running this hearing. Thank you.  
At 12:23 p.m., Council adjourned.

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**WEDNESDAY, 2:00 PM, JUNE 21, 2000**

DUE TO THE LACK OF AN AGENDA

THERE WAS NO MEETING

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